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No. 04-428

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In The
Supreme Court of the United States

JERRY JACKSON STAMPS
AND
TERESA LYNN WITT-STAMPS,

Petitioners,

versus

OFFICE OF DISCIPLINARY COUNSEL OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Louisiana

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

This Court should deny Petition for Writ of Certiorari submitted by Jerry Jackson Stamps and Teresa Lynn Witt-Stamps.

The Office of the Disciplinary Counsel of the Louisiana Attorney Disciplinary Board formally charged Mr. Stamps and Mrs. Stamps with: (i) engagement in the unauthorized practice of law in North Carolina prior to their admission to the Louisiana Bar in violation of Rule 5.5(a) of the Rules of Professional Conduct (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction) and Rule 5.5(b) (assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law); and (ii) their omission of significant and relevant information (*i.e.*, the fact that they had worked in North Carolina) from their applications to take the Louisiana State Bar Examination in violation of Rule 8.1(a) of the Rules of Professional Conduct (knowingly making a false statement of material fact in connection with a bar admission matter), Rule 8.1(b) (failing to disclose a fact necessary to correct a misapprehension in a bar admission matter), Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct), Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and Rule 8.4(d) (engaging in conduct that is prejudicial to the administration of justice).

The Louisiana Supreme Court found clear and convincing evidence that in connection with the Bar application process, both Jerry Jackson Stamps and Teresa Lynn Witt-Stamps knowingly concealed from the Louisiana Supreme Court information relating to their past employment and this failure to disclose prevented the Louisiana Supreme Court from discovering information regarding their unauthorized practice of law in another state. The Louisiana Supreme Court believes this issue has a critical bearing on their character and fitness to practice law in Louisiana.

The Petition does not legitimately assert the Louisiana Supreme Court's decision conflicts with any decision of this court, of a federal court of appeals, or of the highest court of another state. This case does not raise any federal issues of broad applicability. In fact, all of Petitioners' claims only affect Petitioners.

JURISDICTION

Respondent agrees that this Court has jurisdiction under 28 U.S.C. § 1257 to review the April 14, 2004 ruling of the Louisiana Supreme Court and that Court's June 25, 2004 denial of Mr. and Mrs. Stamps' application for rehearing.

STATEMENT OF THE CASE

A. Parties.

The Petitioners are Mr. Jerry Jackson Stamps and Mrs. Teresa Lynn Witt-Stamps.

The Respondent is the Office of the Disciplinary Counsel, an entity which is a part of the Louisiana Attorney Disciplinary Board.

B. Facts and Procedural History.

The statement of this case and its procedural history are fully and clearly set forth in: (i) the Louisiana Supreme Court's April 14, 2004 opinion reproduced at Petitioners' Appendix 1 and Respondent's Appendix A; (ii) the Louisiana Attorney Disciplinary Board's Recommendation to the Louisiana Supreme Court reproduced at Petitioners' Appendix 3 and Respondent's Appendix B; and (iii) the Findings and Recommendations promulgated by the Hearing Committee for the Louisiana State Bar Associations' Disciplinary Board reproduced at Petitioners' Appendix 4 and Respondent's Appendix C.

REASONS FOR DENYING THE WRIT

The Stamps' due process and equal protection challenges to their disbarment do not merit this Court's attention. The Louisiana Supreme Court's decision does not conflict with any decision of this Court, of a federal court of appeals, or of the highest court of another State.[1] Their due process and equal protection challenges do not present important questions of federal law.[2] Instead, their claims lack arguable merit and ask this Court to overturn the Louisiana Supreme Court's findings of fact and interpretation of Louisiana law and procedure.

Does Due Process afford an attorney facing disciplinary proceedings all the guarantees afforded the accused in a criminal case? The answer is no. It is well-settled that Due Process merely requires notice and an opportunity to be heard in disbarment proceedings.[3]

Due Process is a flexible concept. A determination of the particular process due depends on the nature of the proceedings and the interests at stake.[4] Although one (1) particular attorney disciplinary proceeding was characterized by this Court as quasi-criminal,[5] the vast majority of disciplinary proceedings against attorneys are considered *sui generis* in nature. Even in *Ruffalo*, this Court focused on adjudging an individual's character and fitness, not upon adjudging the criminality of his acts or inflicting punishment for them.[6] Due Process thus requires notice

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[1] Supreme Court Rule 10(b) & (c).

[2] Supreme Court Rule 10(c).

[3] *Sealed Appellant 1 v. Sealed Appellee 1*, 211 F.3d 252 (5th Cir.2000), *Crowe v. Smith*, 151 F.3d 217, 229 (5th Cir.1998), *Razatos v. Colorado Supreme Court*, 746 F.2d 1429, 1435 (10th Cir.1994), *Rosenthal v. Justices of the Supreme Court of California*, 910 F.2d 561 (9th Cir.1990).

[4] *Goldberg v. Kelly*, 397 U.S. 254, 268-69, 90 S.Ct. 1011, 25 L.Ed.2d 287 (1970).

[5] *In Re Ruffalo*, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968).

[6] *In Re Daley*, 549 F.2d 462, 474 (7th Cir.1977).

and an opportunity to be heard, permitting the attorney a fair opportunity to present his case.[7]

Petitioners were noticed and had an opportunity to review and respond to the evidence presented in their disciplinary proceeding. Due process requires no more. Respondent respectfully directs the Court's attention to Rule XIX, § 11 – Procedure for Disciplinary Proceedings.[8] Rule XIX, § 11(E) requires disciplinary counsel to provide formal charges in writing that give fair and adequate notice of the nature of the alleged misconduct.[9] The writing must be filed with the Disciplinary Board and served upon the party(ies) who have been formally charged.[10] Respondent asserts the inclusion of this "fair and adequate notice" formality satisfies their initial burden relative to Due Process.

With respect to Petitioners' challenge regarding their right to confrontation, the Confrontation Clause is a protection afforded in criminal proceedings. As such, it does not apply to attorney disciplinary proceedings.[11] Since these proceedings are not criminal in nature, the Code of Evidence is applied in a relaxed fashion.[12]

Petitioners assert their hearing had no live testimony whatsoever; but they fail to inform the Court they did not present witnesses or testify on their own behalf. They claim the introduction of video and transcript deposition testimony violates their right to Due Process where their counsel was present and cross-examined the witnesses

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[7] *Matter of Disciplinary Proceedings of Phelps*, 637 F.2d 171 (10th Cir.1981).

[8] La. Sup.Ct.R. XIX, § 11.

[9] La. Sup.Ct.R. XIX, § 11(E).

[10] La. Sup.Ct.R. XIX, § 11(E)(1) and (2).

[11] *Rosenthal, supra*, 910 F.2d at 565.

[12] *Matter of Calvo*, 88 F.3d 962, 967 (11th Cir.1996), *The Florida Bar v. Vannier*, 498 So.2d 896, 898 (Fla.1986), *In Re Quaid*, 646 So.2d 343, 348 (La.1994), *In Re Kennedy*, 605 A.2d 600, 603 (D.C.App.1992), *In Re Mills*, 539 S.W.2d 447, 450 (Mo.1976).

deposed. The unavailability of the witnesses as being beyond the subpoena power of the Office of Disciplinary Counsel made the use of the depositions necessary.[13] Further, and more telling, counsel for Petitioners stated on the record at the hearing, that he had no objection to the introduction of the depositions of Robin M. Capps, A.J. Sabella, M.D., Billy Ray Blackwell, Carolin Bakewell, and James David Williams.[14]

Petitioners rely upon *Greene v. McElroy*, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959). The Court in *Greene* specifically held the Department did not have such authority, and in the absence of explicit authorization from either the President or Congress, was not empowered, to deprive a person of his job in a proceeding devoid of the safeguards of confrontation and cross-examination.[15]

The Petitioners' string citation beginning with *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), are criminal cases where the Sixth Amendment is expressly applicable or *Habeas Corpus* cases such as *Brookhart v. Janis*, 384 U.S. 1, 86 S.Ct. 1245, 16 L.Ed.2d 314 (1966). Petitioners conclude by citing another criminal case concerning the Confrontation Clause, *Alford v. United States*, 282 U.S. 687, 51 S.Ct. 218, 75 L.Ed. 624 (1931)

In conclusion, attorney disciplinary proceedings are neither civil nor criminal in nature. They are not civil because they do not involve two (2) parties, one (1) seeking damages or equitable relief from the other. They are not criminal because punishment of an attorney is not the goal. Disciplinary proceedings are actions commenced by Respondent to protect the general public. Thus, the Confrontation Clause is inapplicable and the Code of Evidence is applied in a relaxed fashion.

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[13] *See Disciplinary Action Against Peterson*, 456 N.W.2d 89 (Minn. 1990).

[14] Counsel did object to the deposition of Brenda Williams and to all or some of the exhibits offered through the depositions of Brenda Williams, James David Williams and Carolin Bakewell.

[15] *Id.*, 360 U.S. at 508, 79 S.Ct. 1420.

Petitioners were afforded Due Process and Equal Protection. They received notice and a fair opportunity to present their case. They were not treated unfairly.

A. *In Re Quaid*, 646 So.2d 343 (La.1994) does not violate the Fourteenth Amendment to the United States Constitution.

In Re Quaid, 646 So.2d 343 (La.1994) does not violate the Fourteenth Amendment to the United States Constitution.

1. The Louisiana Supreme Court has exclusive jurisdiction over attorney disciplinary proceedings.

The Louisiana Constitution vests the Louisiana Supreme Court with exclusive jurisdiction over disciplinary proceedings against a Louisiana Bar member.[16] And the Louisiana Supreme Court has made it manifestly clear that it has:

> . . . exclusive and plenary power to define and regulate all facets of the practice of law, including the admission of attorneys to the bar, the professional responsibility and conduct of lawyers, the discipline, suspension, and disbarment of lawyers, and the client-attorney relationship.[17]

This exclusive jurisdiction to define and regulate the practice of law is a well-settled principle which has been repeatedly upheld by courts, both state and federal, throughout Louisiana.[18] Consequently, the Louisiana

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[16] La. Const. 1974, Art. V, § 5(B). *See In Re Laudumiey*, 849 So.2d 515, 522-23 (La.2003).

[17] *Dodson v. Spiliada Maritime Corp.*, 951 F.2d 40, 43 (5th Cir.1992), citing *Succession of Wallace*, 574 So.2d 348, 350 (La.1991).

[18] *Dodson*, 951 F.2d at 43; *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 779 So.2d 715 (La.2001); *In Re Bar Exam Class Action*, 752 So.2d 159 (La.2000); *Mire v. City of Lake Charles*, 540 So.2d 950, 956-57 (La.1989) (J. Waston, dissenting for other reasons);

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Supreme Court was well within its authority to adjudicate Petitioners' alleged disciplinary breaches.

2. Rule XIX – Rules for Lawyer Disciplinary Enforcement.

In exercising its constitutional grant and its inherent judicial powers, the Louisiana Supreme Court adopted Rule XIX – Rules for Lawyer Disciplinary Enforcement. Rule XIX, § 18 delineates several points which are critical to this Court's adjudication of the instant controversy. First and foremost, Rule XIX, § 18(A) clearly and unequivocally provides disciplinary proceedings in Louisiana are categorized as being neither civil nor criminal; they are sui generis.[19] Rule XIX, § 18(B) then provides:

> Except as otherwise provided in these rules, the Louisiana Code of Civil Procedure and the Louisiana Code of Evidence apply in discipline and disability cases. No provision of the Louisiana Code of Evidence shall prevent the introduction of sworn testimony from social security hearings, trials, or hearings of a contradictory nature where the respondent has cross-examined or had the opportunity to cross-examine the witnesses whose testimony is sought to be introduced.[20]

It is of interest to note at this point that Petitioners conveniently failed to include the portion of Rule XIX, § 18(B) which specifically permits the introduction of sworn testimony from trials or contradictory hearings when they cited to this Rule in their Petition.[21]

Louisiana Bar Ass'n v. Edwins, 540 So.2d 294, 298-99 (La.1989); *Saucier v. Hayes Dairy Products, Inc.*, 373 So.2d 102, 115 (La.1978); *Meuiner v. Bernich*, 170 So. 567, 577 (La.App.1936); *Ex Parte Steckler*, 179 La. 410, 154 So.2d 41 (1934).

[19] La. Sup.Ct.R. XIX, § 18(A).

[20] La. Sup.Ct.R. XIX, § 18(B).

[21] *See* Petition, p. 2.

Because disciplinary proceedings are of a unique kind or class, Rule XIX, § 18(C) provides that formal misconduct charges must be established by "clear and convincing" evidence.[22] This "clear and convincing" standard bisects the standards traditionally applied in civil matters (preponderance of the evidence) and criminal matters (beyond a reasonable doubt).

Rule XIX, § 18(D) then places the burden of proof, by means of the aforementioned "clear and convincing" standard, squarely on the shoulders of the Louisiana Disciplinary Counsel.[23]

Thus, Rule XIX, § 18 categorizes the disciplinary proceedings against Petitioners as neither civil nor criminal in nature. While the Louisiana Code of Evidence applied to the proceedings, it did not prohibit the introduction of sworn testimony from trials or contradictory hearings where Petitioners cross-examined or had the opportunity to cross-examine the witnesses. In fact, as Respondent will illustrate infra, jurisprudence interpreting Rule XIX, § 18 actually provides a clearly defined parameter for the types of evidence admissible before the Supreme Court in adjudicating a disciplinary proceeding.

3. The Louisiana Supreme Court is the trier of fact in attorney disciplinary proceedings.

Because the Louisiana Supreme Court is vested with original jurisdiction over disciplinary proceedings against Louisiana Bar members, it acts as the trier of fact and must conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. After such determination is made, the Court may then impose an appropriate sentence. In 1992, the Louisiana Supreme Court held:

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[22] La. Sup.Ct.R. XIX, § 18(C).

[23] La. Sup.Ct.R. XIX, § 18(D).

> In disciplinary matters, this Court functions as trier of fact and conducts an independent review to determine if the charged misconduct is proven by clear and convincing evidence. *Louisiana State Bar Ass'n v. Lindsay*, 553 So.2d 807 (La.1989); *Louisiana State Bar Ass'n v. McGovern*, 481 So.2d 574 (La.1986); La. Sup.Ct.R. XIX § 18(C). Although the Hearing Committee and the Disciplinary Board make recommendations, exclusive jurisdiction and sole responsibility for imposing appropriate discipline remains with this Court. *Mire v. City of Lake Charles*, 540 So.2d 950 (La.1989), *McGovern*; La. Const. art. 5, § 5(B).[24]

Petitioners would have this Court believe their Fourteenth Amendment rights were violated by the Louisiana Supreme Court in that the Louisiana Supreme Court did not have jurisdiction over Petitioners' disciplinary matter. The Louisiana Supreme Court found clear and convincing evidence that in connection with the Bar application process, both Jerry Jackson Stamps and Terry Lynn Witt-Stamps knowingly concealed from the Louisiana Supreme Court information relating to their employment.[25] The Court held this failure to disclose prevented it from discovering information regarding Petitioners' unauthorized practice of law in another state.[26] The Louisiana Supreme Court believes this issue has a critical bearing on their character and fitness to practice law in Louisiana.[27]

At each phase in these disciplinary proceedings, Petitioners have raised jurisdiction as an issue.[28] At each

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[24] *Id.*

[25] *In Re Stamps*, 874 So.2d 113, 124 (La.2004).

[26] *Id.*, at p. 124.

[27] *Id.*

[28] Mr. and Mrs. Stamps sought peremptory dismissal of the charges based on the grounds that (1) none of the complained of conduct occurred in Louisiana and (2) that they did not work in Louisiana until such time as they were lawfully admitted to the Bar.

phase of these proceedings, the issue has been addressed and dismissed.[29] The Louisiana Supreme Court has exclusive and plenary power to define and regulate all facets of the practice of law, including the admission of attorneys to the Bar, in Louisiana.[30] To this end, the Louisiana Supreme Court adopted the Rules of Professional Conduct.[31] Rule 8.1 places an explicit duty on the "applicant for admission to the bar" to refrain from knowingly making false statements of material fact on an application for admission and to disclose facts necessary to correct any misapprehensions arising in such a matter.[32] The duty imposed by Rule 8.1 extends to persons seeking admission to the Bar as well as lawyers.[33] The Louisiana Supreme Court opined the obvious purpose for this disclosure requirement is to provide the Court with the information necessary to make an informed determination as to whether the applicant possesses the sufficient character

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[29] *See* App. A, B and C.

[30] *In Re Stamps*, 874 So.2d 113 (La.2004), citing *Bester v. Louisiana Supreme Court Comm. on Bar Admissions*, 779 So.2d 159 (La.2001); *Succession of Wallace*, 574 So.2d 348, 350 (La.1991); *Ex Parte Steckler*, 179 La. 410, 154 So. 41 (1934).

[31] Louisiana State Bar Articles of Incorporation, Art. 16, Rules of Prof. Conduct (1998).

[32] An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (a) Knowingly make a false statement of material fact; (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege. Louisiana Rules of Prof. Conduct, Rule 8.1 (1998).

[33] The comments to Rule 8.1 provide, in pertinent part the duty imposed by Rule 8.1 extends to persons seeking admission to the bar as well as lawyers. Therefore, if a person makes a false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is later admitted.

and fitness to be admitted to the practice of law in Louisiana. The Louisiana Supreme Court went on to say that "information relating to an applicant's employment, especially the applicant's employment in a legal setting, is particularly relevant."[34]

Among the factors to be considered in determining whether an applicant possesses the requisite character and fitness to be admitted to the Bar in Louisiana are the following, which are contained in Louisiana Supreme Court Rule XVII, § 5(C):

> While the Committee may consider any factor or circumstance in determining whether or not to further investigate an applicant's character and fitness, any of the following should be considered to be a basis for investigation and inquiry before recommending admissions: . . . (4) misconduct in employment; . . . (6) commission of an act constituting the unauthorized practice of law. . . .[35]

In their opinion herein, the Louisiana Supreme Court held:

> Clearly, this court has jurisdiction to discipline a lawyer when it is subsequently determined the lawyer deprived this court in the bar admission process of vital information relative to whether the individual possessed the necessary character and fitness for admission. To hold otherwise would encourage applicants to withhold information during the application process.[36]

In reaching its decision, the Louisiana Supreme Court looked to and relied upon other states in reaching their conclusions.[37]

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[34] *In Re Stamps*, 874 So.2d 113.

[35] La. Sup.Ct.R. XVII, § 5(C).

[36] *In Re Stamps.*, at p. 121.

[37] *See Matter of Cherryhomes*, 115 N.M. 734, 858 P.2d 401 (1993); *Matter of Rosen*, 570 A.2d 728 (D.C.App.1989); *Matter of Scavone*, 106

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In their Writ Application to this Honorable Court, Petitioners rely upon several cases to support their position that neither of them worked for Gabrielee Locklear nor did they perform services for him amounting to the practice of law.[38] The Louisiana Supreme Court analyzed the evidence before it and determined the evidence overwhelmingly illustrated Petitioners knowingly concealed information relating to their employment.[39] The Court further held Petitioners' failure to disclose prevented the Court from discovering information regarding their unauthorized practice of law in another state, an issue which has a critical bearing on their character and fitness to practice law in Louisiana.[40]

While both Petitioners would have this Court believe they are the true victims in this matter, the evidence presented by the Respondent and Petitioners to the Louisiana Supreme Court, suggests otherwise. The licensing of attorneys in Louisiana, like North Carolina and all other States, is for the general public's protection. To hold oneself out as a lawyer, while not being licensed, is punishable in each state with sanctions. These sanctions range from suspension all the way to disbarment.

Because the instant Petition is fact-based, this Court should deny this Application pursuant to Supreme Court Rules, Part III, Rule 10.

N.J. 542, 524 A.2d 813 (1987); *In Re Chandler*, 161 Ill.2d 459, 204 Ill.Dec. 249, 641 N.E.2d 473 (1994); *State ex rel. Oklahoma Bar Ass'n v. Flanery*, 863 P.2d 1146 (Okla.1993); *Office of Disciplinary Counsel v. Zdrok*, 538 Pa. 41, 645 A.2d 830 (1994).

[38] *Wells Fargo Bank v. New Orleanian Limited Partnership*, 855 So.2d 388 (La.App. 4 Cir.2003); *Disciplinary Hearing Commission of the North Carolina State Bar v. Reginald Frazier*, 354 N.C. 555, 556 S.E.2d 262 (N.C.2001); *North Carolina State Bar, Role of the Legal Assistant*, 1989 WL 550599 (N.C.St.Bar.)

[39] *In Re Stamps*, at p. 123.

[40] *Id.*, at p. 124.

4. The Louisiana Supreme Court is empowered with the ability to review all relevant evidence.

In conducting its independent review of the record as the trier of fact, the Louisiana Supreme Court is empowered with the ability to review all relevant evidence. In a concurrence to the 1992 *In Re Huddleston* decision, Justice Dennis included an explanation as to why the Louisiana Supreme Court can and should review all relevant evidence in a disciplinary proceeding:

> Moreover, ultimate questions of admissibility are for this court to decide under its original jurisdiction as the trier of facts in disciplinary proceedings. As the majority observes, La. Sup.Ct. Rule 19 § 18B provides that, except as otherwise provided in the rules, the Louisiana Code of Civil Procedure and the Louisiana Code of Evidence apply in discipline and disability cases. However, I believe that this Court intends that 'the principles underlying [the evidence code] shall serve as guides to the admissibility of evidence [and that the] specific exclusionary rules and other provisions . . . shall be applied only to the extent that they tend to promote the purposes of the proceeding,' as in workers' compensation, juvenile, and other specialized proceedings. *See* Louisiana Code of Evidence art. 1101 B. In my opinion, particularly in gathering evidence to support recommended sanctions, the duty of the Disciplinary Board is to receive all evidence directly bearing upon the issues to be decided in the proceeding; evidence should be excluded by the Court only if it is wholly irrelevant or rank hearsay or pure conjecture. *See In Re Reed*, 207 La. 1011, 22 So.2d 552 (1945). Because this court and courts of many other states have not required that the rules of evidence be adhered to strictly in disciplinary proceedings, *see In Re Reed, supra*, and *State v. Dawson*, 111 So.2d 427 (Fla.1959), and cases cited therein, all other evidence should be received

> and given whatever consideration it deserves by the Board and this court. Evidence which appears inherently unreliable will be disregarded by this court on review of the disciplinary proceedings below.[41]

To this end, the principles underlying the Code of Evidence are to serve as guides to the admissibility of evidence and the specific exclusionary rules and other provisions are to be applied only to the extent that they tend to promote the purposes of the proceeding. Justice Dennis then imposed upon the Disciplinary Board the duty of receiving all evidence which directly bears upon the issues to be decided; that evidence should only be excluded by the Court if it is wholly irrelevant, rank hearsay, or pure conjecture.

Justice Dennis thus legitimized the Louisiana Supreme Court's employment of a relaxed application of the Code of Evidence when adjudicating disciplinary proceedings under Rule XIX in 1992, over a decade before they decided the case *sub judice*. Respondent now asserts such a relaxed application of the Code of Evidence in the peculiar context of disciplinary proceedings does not offend Petitioners' rights afforded by Due Process or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

5. The *Quaid* decision.

Petitioners challenge the validity of the *Quaid* decision (and its consequent applicability to the instant dispute), arguing its constitutionality permits the introduction of evidence which is "clearly unreliable and untrustworthy hearsay".[42] Petitioners assert *Quaid* is "in conflict with the Court's Rule XIX, Section 18(B) of the Louisiana Rules of Professional Conduct and the Fourteenth Amendment to the Constitution of the United

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[41] *In Re Albert Huddleston, Jr.*, 595 So.2d 1141, 1148 (La.1992) (Dennis, Jr., concurring).

[42] Petition, pp. 14-19.

States."[43] As Respondent pointed out previously, Rule XIX, § 18(B) specifically provides for the introduction of sworn testimony from trials or contradictory hearings where the respondent/petitioner has cross-examined or had the opportunity to cross-examine the witnesses whose testimony is sought to be introduced.

The *Quaid* decision does not permit the introduction of evidence which is clearly unreliable and untrustworthy. Instead, the *Quaid* decision held:

> Bar disciplinary matters come within the original jurisdiction of this Court. La. Const. art. V, § 5(B). Consequently, we act here as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proved by clear and convincing evidence. *LSBA v. Bouthall*, 597 So.2d 444 (La.1992), La. Sup.Ct.R. XIX, § 18(C). [FN2] (footnote omitted)

Respondent asserts the *Quaid* decision merely reiterates what the Louisiana Supreme Court previously held in *In Re Huddleston* and *Bouthall* and what similarly-situated courts have held in other jurisdictions. The Court as the trier of fact in a disciplinary proceeding is not required to strictly adhere to the Code of Evidence.[44] Instead, it is empowered with the authority to consider all relevant evidence before rendering a determination and should only disregard evidence which appears to be inherently unreliable, wholly irrelevant, rank hearsay, or pure conjecture.

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[43] Petition, p. 11. It is of interest to note Rule XIX is not part of the "Rules of Professional Conduct". Instead, it is part of the Rules of the Supreme Court of Louisiana and, particularly, governs rules for lawyer disciplinary enforcement.

[44] Indeed as Justice Dennis noted in the portion of *Huddleston* quoted above, this position is consistent with Louisiana Code of Evidence Art. 1101, as it relates to specialized proceedings such as Bar proceedings.

B. Disciplinary proceedings conducted under La. Sup.Ct.R. XIX do not require strict adherence to the Sixth Amendment's Confrontation Clause.

Disciplinary proceedings conducted under La. Sup.Ct.R. XIX are not criminal in nature and therefore do not require strict adherence to the Sixth Amendment's Confrontation Clause. Petitioners spend a considerable amount of time discussing the applicability of this Court's recent decision in *Crawford v. Washington*, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).[45] Petitioners assert the procedures employed in their disciplinary hearing, particularly at the Hearing Committee level, violated their constitutionally-protected rights to confront and cross-examine witnesses and be free from hearsay evidence.[46] Petitioners' reliance upon Crawford is misplaced and their concerns about the introduction of hearsay evidence are meritless.

Disciplinary proceedings before the Louisiana Supreme Court are not criminal matters. They are *sui generis*, unique proceedings with a particularized standard of evidentiary proof ("clear and convincing") which is inferior to that applicable to criminal matters ("beyond a reasonable doubt"). In fact, the Louisiana Supreme Court has recognized the unique nature of disciplinary proceedings by ruling:

> In making a determination of the appropriate sanction, we are mindful that the purpose of lawyer disciplinary proceedings is not primarily to punish the lawyer, but rather to maintain appropriate standards of professional conduct to safeguard the public, to preserve the integrity of the legal profession, and to deter other lawyers

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[45] Petition, pp. 11-14.

[46] Petition, p. 11.

> from engaging in violations of the standards of the profession.[47]

To that end, as explained in Crawford, the Sixth Amendment's Confrontation Clause is inapplicable. A disciplinary proceeding before the Louisiana Supreme Court is not a criminal proceeding with penal implications. It is a quasi-judicial proceeding designed to maintain appropriate standards of professional conduct. This is in stark contrast to a criminal proceeding which provides the right to confront and cross-examine witnesses and mandates strict adherence to the Code of Evidence. As explained *supra*, the very nature of the disciplinary proceedings permits a relaxed evidentiary standard. Petitioners' reliance upon the Crawford decision is misplaced and meritless.

C. Petitioners' reliance upon *In Re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968) is misplaced and meritless.

Petitioners cite to *In Re Ruffalo* for the proposition that the United States Supreme Court has identified disbarment proceedings as "quasi-criminal" in nature so as to ensure the "charge must be known before the proceedings commence and they become a trap when, after they are underway, charges are amended on basis of testimony of accused who can then be given no opportunity to expunge earlier statements and start afresh."[48]

Mr. Ruffalo was originally brought up on twelve (12) charges of misconduct.[49] A thirteenth charge was added without allowing Mr. Ruffalo an opportunity to address

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[47] *In Re LeBlanc*, 786 So.2d 719, 722 (La.2001), citing *Louisiana State Bar Ass'n v. Guidry*, 571 So.2d 161 (La.1990); *see In Re Sharp*, 802 So.2d 588 (La.2001), *In Re Alker*, 491 So.2d 1328 (La.1986).

[48] Petition, p. 14. It is of interest to note that while Petitioners quote this text, it is not found within the opinion's body but is found, rather, at Headnote 8.

[49] *In Re Ruffalo*, 390 U.S. 544, 546, 88 S.Ct. 1222, 1223-24, 20 L.Ed.2d 117 (1968).

it.[50] The Ohio State Board of Commissioners on Grievances and Discipline found him guilty of seven (7) counts of misconduct, including No. 13.[51] The Supreme Court of Ohio found the evidence sufficient to sustain only two (2) charges, one (1) of them being No. 13, but concluded that the two (2) violations required disbarment.[52]

This Court ultimately held that Mr. Ruffalo was entitled to due process, which includes fair notice of the charges against him, during his disbarment proceedings.[53] Citing *Randall v. Brigham*, 7 Wall. 523, 540, 19 L.Ed. 285 (1868), Justice Douglas held that because disbarment proceedings do not occur in open court in the presence of judges, notice must be given to the attorney of the charges made and an opportunity afforded to him for explanation and defense.[54] Respondent asserts the addition of the thirteenth charge, without procedural due process (which includes fair notice of the charge), was found to be an adversary proceeding akin to a quasi-criminal proceeding.[55] It was akin to a quasi-criminal proceeding because the charge was not known before the proceedings commenced and they became a trap when, after they began, the charges were amended on the basis of the testimony of the accused.[56] Mr. Ruffalo thus had no opportunity to expunge the earlier statements and start afresh.[57]

Petitioners' situation is materially different from that faced by Mr. Ruffalo. At no time were additional charges lodged against them based upon testimony they provided during the disciplinary proceeding. After an investigation, Respondent filed one (1) count of formal charges against

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[50] *Id.*

[51] *Id.*, 390 U.S. at 547.

[52] *Id.*

[53] *Id.*, 390 U.S. at 550, 88 S.Ct. at 1226.

[54] *Id.*

[55] *Id.*, 390 U.S. at 551.

[56] *Id.*

[57] *Id.*

Petitioners. The charges alleged violations of Rules 5.5(a), 5.5(b), 8.1(a), 8.1(b), 8.4(a), 8.4(c), and 8.4(d) of the Rules of Professional Conduct.[58] At no time did these charges expand, either in number or in scope. From the onset, Petitioners were made aware of the potential sanction that awaited them should they be found guilty of violating the aforementioned Rules of Professional Conduct. Ruffalo does not support Petitioners' contentions.

D. Rule XIX permits the introduction of evidence from other proceedings.

Rule XIX permits a relaxed application of the Louisiana Code of Evidence so as to allow the introduction of evidence from other proceedings. As Respondent explained *supra*, the disciplinary proceedings under Rule XIX provide for the introduction of evidence not necessarily admissible under a strict application of the Rules of Evidence. Based upon that relaxed standard, Respondent asserts the Louisiana Supreme Court, in its role as trier of fact in this matter, had the right to consider documentary evidence accumulated and submitted by the North Carolina Disciplinary Board in connection with Mr. Locklear's disbarment proceeding. These were formal proceedings conducted in a fashion similar to the one conducted in this matter. The North Carolina Disciplinary Board conducted a disciplinary investigation into Mr. Locklear's activities and ultimately concluded Mr. Locklear committed acts worthy of disbarment. These acts included the sharing of fees with individuals not licensed to practice law, Mr. and Mrs. Stamps.

The documents considered by both the North Carolina Disciplinary Board and by the Louisiana Supreme Court included multiple negotiable instruments which, in the Court's judgment, evidenced Mr. Stamps' and Mrs. Stamps' receipt of monetary proceeds for their work on legal matters. The Court also considered letters written by

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[58] *See* App. A, C, and D.

Mr. Stamps to Mr. Locklear on behalf of both Petitioners concerning fees purportedly owed to them for work done on particular legal matters. Additionally, the Court considered Mr. Locklear's self-incriminating stipulation (made in conjunction with the proceedings against him) that he split fees with Mr. and Mrs. Stamps.

Respondent asserts the consideration of these documents and stipulation complies with the Louisiana Supreme Court's ability to render ultimate questions of admissibility under its original jurisdiction as the trier of facts in disciplinary proceedings. Furthermore, Respondent asserts the Court's consideration of this evidence did not offend Petitioners' rights under Rule XIX. Respondent asserts these documents, accumulated and submitted in conjunction with an official investigation into Mr. Locklear, do not rise to the "clearly unreliable and untrustworthy hearsay" level espoused by Petitioners. Likewise, their introduction into these proceedings did not violate Petitioners' rights under the Confrontation Clause because those rights are inapplicable in this peculiar context.

E. The Louisiana Supreme Court had ample evidence to disbar Petitioners.

In the alternative, should this Court find the Louisiana Supreme Court's consideration of certain documents and factual findings from a proceeding in another jurisdiction to be in violation of the applicable standards of evidence, the Court still had ample evidence accumulated exclusively for purposes of this proceeding from which it could conclude Petitioners committed acts sufficient to merit disbarment. As evidenced by the procedural history in this matter, Respondent conducted a thorough, independent investigation into Petitioners' activities. This investigation included taking sworn statements from both Mr. Stamps and Mrs. Stamps as well as taking several depositions from former clients in North Carolina, insurance adjusters in North Carolina, a North Carolina health care provider, and Ms. Carolin Bakewell, counsel for the

North Carolina Bar.[59] At each and every one of these depositions, Mr. Leslie Schiff, Petitioners' counsel, was present and participated in a material manner. He had ample opportunity to cross-examine the witnesses and raise objections to testimony he found questionable.

As is evidenced by the *In Re Stamps* decision, the Louisiana Supreme Court considered the aforementioned testimony very carefully. Mr. Billy Ray Blackwell clearly testified as to his understanding that Petitioners represented him as his attorney on six (6) separate matters. After becoming disgruntled with the lack of progress on his cases, he went so far as to report Petitioners to the North Carolina Bar. Mr. Williams testified that he retained Mrs. Stamps in 1999 to represent him in a dispute over an automobile accident. She settled the case on his behalf and paid him directly from her personal checking account. Later, upset by the fact that some of his medical bills were not paid, Mr. Williams also filed a complaint against Mrs. Stamps with the North Carolina Bar. Dr. Sabella corroborated Mr. Williams' testimony after he had forwarded medical bills to "Lynn Stamps, Esq." When no payment was made, he too reported Mrs. Stamps to the North Carolina Bar, assuming she was a licensed attorney.

Ms. Robin Capps, an insurance adjuster, testified that she often spoke to Mrs. Stamps and corresponded with her. Mrs. Stamps contacted Ms. Capps about the personal injury settlement of Mr. Carl Oxedine (a client of Mr. Locklear) in November, 1998. Ms. Capps testified she was under the impression that Mrs. Stamps was a licensed attorney, and that she was never advised otherwise.

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[59] All but Ms. Bakewell's deposition were done by video. A deposition was also taken from Ms. Brenda Williams, an employee of Harleyville Insurance Company. She was deposed in order to produce documents from the files of a North Carolina insurance company which evidenced Mrs. Stamps' negotiating a personal injury settlement. However, the Louisiana Supreme Court did not consider Mrs. Williams' testimony in its opinion, so Respondent will not now address her testimony.

Finally, Ms. Carolin Bakewell testified about Petitioners. She testified that it was her opinion that they had split fees with Mr. Locklear and in support of her opinion, she noted that the checks issued by Mr. Locklear to Petitioners represented exactly fifty percent (50%) of the attorneys' fees in the respective cases. She noted the North Carolina Disciplinary Board rejected Mr. Locklear's argument that the checks simply represented salary payments.

Respondent asserts that the aforementioned discovery, independent of any investigation conducted in connection with Mr. Locklear's disbarment proceedings, is more than adequate to support the Louisiana Supreme Court's decision to disbar Petitioners under the Rules of Professional Conduct. The taking of these depositions and the introduction of the testimony did not in any way offend Petitioners' rights under Rule XIX. Petitioners allude to their innocence (vicariously) through the absence of any prosecution against them by authorities in North Carolina.[60] But Ms. Bakewell dispensed that argument when she testified the only reason why the North Carolina Bar did not prosecute Petitioners was because by the time their conduct was discovered, they had fled to Louisiana.

Based upon the aforementioned testimony elicited during Respondent's investigation of Petitioners, Respondent asserts there is ample evidence to uphold the Louisiana Supreme Court's disbarment of Petitioners.

F. The Denial of Petitioners' Motion to Sever did not violate the Fourteenth Amendment to the United States Constitution.

The denial of Petitioners' Motion to Sever did not violate the Fourteenth Amendment to the United States Constitution. Throughout these proceedings, Petitioners have asserted their right to have the charges against them severed. Respondent has aggressively argued against it.

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[60] Petition, p. 8.

The Louisiana Supreme Court sided with Respondent, finding no indication that Petitioners were prejudiced in any way as the result of the joint hearing.[61] The Court noted that Mr. and Mrs. Stamps did not present antagonistic defenses and were represented by the same counsel, Mr. Leslie Schiff, throughout the proceedings.[62] The Court also noted that the witnesses clearly distinguished the actions of Mr. and Mrs. Stamps in their testimony and, likewise, both the Hearing Committee and the Disciplinary Board drew distinctions between the two (2) in their reports.[63] Thus, the Court found no support for the conclusion that the joint hearing created any confusion or prejudice worthy of requiring a severance of the charges against them.[64]

Despite this finding, Petitioners have again raised the issue in their instant Petition. They now claim their due process rights and rights under the equal protection clause were violated as the result of not being severed from one another.[65] Among their allegations, Petitioners assert severance is warranted because Respondent indiscriminately referred to them as "The Stamps" while each of them should be held accountable only for his or her own respective actions.[66] Respondent has repeatedly opposed these efforts and again does so now.

Petitioners cite no Louisiana Supreme Court Rule XIX authority in support of their position. That being considered, the Louisiana Code of Civil Procedure which applies in the absence of Rule XIX authority (see La. Sup.Ct.R. XIX, § 18B) favors accumulation.[67] So do the concepts of judicial efficiency and avoidance of unnecessary inconvenience to witnesses

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[61] *In Re Stamps*, 874 So.2d 113, 122 (La.2004), *see* App. A.

[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] Petition, pp. 24-25.

[66] *Id.*

[67] *See* LA. CODE CIV. PROC. art. 463, 641, and 647.

and non-parties. Petitioners were charged together because they acted in concert in a common scheme or activity in violation of the aforementioned Rules of Professional Conduct. The witnesses against both of them are obviously the same, given their common scheme or activity. If Petitioners were offering contradictory or inconsistent defense, their counsel would have been required to withdraw from the representation of both to avoid a conflict of interest. Since they did not offer contradictory or inconsistent defenses, judicial economy and avoidance of inconvenience to witnesses and non-parties strongly suggests that Petitioners were properly tried together.

Petitioners' argument concerning the use of letters and faxes written by Mr. Stamps, as evidence against both himself and his wife, is also without merit. Mr. Stamps identified those letters in a sworn statement and made a variety of statements concerning them. He testified at length about those letters and the circumstances surrounding them. Mr. Stamp's statements and the letters are not hearsay because they constitute personal, authorized and/or relational admissions against both Mr. and Mrs. Stamps.[68] Many of the statements contained in those letters are also corroborated by Mrs. Stamps in her sworn statement. Petitioners acted in concert in the same location during the same period of time and engaged in activities witnessed by the same individuals. Clearly since they acted together, they were properly tried together. They now provide no basis in law for severance and their argument on this issue is without merit.

G. The Louisiana Supreme Court's acknowledgement of the presence of aggravating factors and the absence of mitigating factors did not violate the Fourteenth Amendment to the United States Constitution.

The Louisiana Supreme Court's acknowledgement of the presence of aggravating factors and the absence of

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[68] LA. CODE OF EVID. art. 801(D)(2) and (3).

mitigating factors did not violate the Fourteenth Amendment to the United States Constitution. In its decision, the Louisiana Supreme Court recognized Petitioners' continuous refusal to acknowledge the wrongful nature of their conduct as an aggravating factor towards their disbarment.[69] The Court identified Petitioners' actions as "knowingly deceitful" and found they sought to frustrate the Court's ability to make an informed determination of their character and fitness prior to admitting them to the Louisiana State Bar.[70] The Court went so far as to speculate Petitioners may have made deliberate misrepresentations or untruthful statements in their sworn statements.[71] Based upon these factors, the Court reasonably found Petitioners' actions impeded the fundamental responsibility of the Court to assure the protection of the public and to safeguard the administration of justice.[72] From this, the Court held Petitioners convincingly demonstrated they lacked the good moral character to practice law in Louisiana and unquestionably, as a baseline, should be sanctioned with disbarment.[73] Furthermore, the Court found no mitigating factors in the record and rejected the disciplinary board's recognition of Petitioners' inexperience in the practice of law and lack of a prior disciplinary record as mitigating factors.[74]

Petitioners now assert the presence of several factors (absence of prior disciplinary record; absence of a dishonest or selfish motive; full and free disclosure to Disciplinary Counsel and cooperative attitude towards proceedings; inexperience in the practice of law; and character and reputation) mitigate the imposition of disbarment upon

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[69] *In Re Stamps*, 874 So.2d at 125.

[70] *Id.*

[71] *Id*, 874 So.2d at 125, n. 7.

[72] *See* La. Sup.Ct.R. XVII, § 5(A); *In Re Singer*, 819 So.2d 1017 (La.2002).

[73] *Id.*

[74] *Id*, 874 So.2d at 125, n. 8.

them.[75] However, three (3) of these allegedly mitigating factors were previously raised and summarily denounced by Louisiana Supreme Court. The Court implicitly denounced Petitioners' "full and free disclosure" assertion by holding them liable for continuously refusing to acknowledge the wrongful nature of their conduct.[76] The Court then correctly recognized Petitioners' inexperience as having no bearing on their failure to disclose basic information on their applications to take the bar examination.[77] Likewise, the Court correctly found the lack of a prior disciplinary record was of no moment considering the fact that the misconduct occurred at the very inception of their legal careers in Louisiana.[78]

The remaining two (2) factors, "absence of a dishonest or selfish motive" and "character and reputation", are quickly dispatched as well. Respondent asserts there is an inherent "dishonest or selfish motive" on the parts of Petitioners given their failure to divulge even the most basic information on their applications and their continuous refusal to acknowledge their wrongdoing. And in response to the "character and reputation" assertion, Respondent counters by arguing that if Petitioners indeed have the ethics and divinity training they describe in their Petition, this training should have provided them with nothing less than a heightened sense of propriety when completing their applications to take the Louisiana Bar examination. Yet, even with this training, they still materially misled the Louisiana Bar Association and the Louisiana Supreme Court. Additionally, as noted by the Louisiana Disciplinary Board, Petitioners are "well beyond the age of most law school graduates" and are "mature" individuals who Respondent asserts should be cast with

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[75] Petition, pp. 26-27.

[76] *Id.*

[77] *In Re Stamps*, 874 So.2d at 125.

[78] *Id.*

the responsibility of reasonable judgment and discernment.[79]

Respondent asserts Petitioners have not provided this Court with any rational basis to overturn the Louisiana Supreme Court's reasonable findings of aggravating circumstances without benefit of mitigation. Instead, they merely cite to *Louisiana State Bar Association v. Dutel*, 572 So.2d 503 (La.1989), and *In Re LaNasa*, 625 So.2d 1337 (La.1993). Petitioners assert these cases support their proposition that their disbarment is "far too harsh, excessive, is a shock to one's conscience" and denies them equal protection of the law.[80]

In *Dutel*, the Louisiana Supreme Court issued a public reprimand to an attorney who made a "technical violation" of banking regulations on a loan application to a Federal institution for the purpose of influencing that institution to give him a loan after a Federal conviction.[81] Respondents counter by asserting a technical violation of banking regulations on a loan application is significantly less reprehensible than materially misrepresenting critical information on a Bar application and/or practicing law in another jurisdiction without a license.

In *LaNasa*, the Supreme Court suspended an attorney for two (2) years following his admission he improperly used client funds and made false statements on his application to the Mississippi Board of Bar Admissions.[82]

Respondents respond to Petitioners' reliance on the *LaNasa* decision by asserting Petitioners' behavior is significantly more reprehensible than that displayed by

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[79] Appendix C. Mr. Stamps was fifty-eight (58) at the time of the Disciplinary Board's Recommendation while Mrs. Stamps was approximately forty-eight (48) at that time.

[80] Petition, p. 28.

[81] *Louisiana State Bar Association v. Dutel*, cited by Petitioners as being found at 572 So.2d 503, is actually found at 542 So.2d 503 (La.1989).

[82] *In Re LaNasa*, 625 So.2d 1337 (La.1993).

Mr. LaNasa. This is compounded by the fact that he actually took affirmative steps to remediate his actions which Petitioners have never even acknowledged their guilt.

Respondents assert that across the country sanctions are being imposed upon attorneys who misrepresent themselves in connection with their Bar applications.[83] These cases run the gamut from short-term suspensions through disbarment, depending upon the seriousness of the violation and the presence or absence of mitigating factors. The New Mexico Supreme Court indefinitely suspended an attorney who, among other violations, forged a physician's signature on a Certificate of Fitness required by the Bar application process in Arizona.[84]

An attorney was suspended for nine months for failing to supplement his Maryland Bar application to indicate that he was under investigation for alleged professional misconduct in the District of Columbia, where he had previously been admitted to practice law.[85] Another attorney was disbarred for falsely stating to Maryland Bar authorities that he was engaged in the full time practice of law in Pennsylvania, which enabled him to obtain admission to the Maryland Bar by comity, without having to pass the bar examination.[86] An attorney was disbarred for falsely indicating on his Bar application that he had never been subjected to disciplinary action or asked to withdraw from any educational institution, when in fact, he had withdrawn from the University of Pennsylvania's School of Law in the face of disciplinary charges.[87] The Court noted

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[83] *See People v. Culpepper*, 645 P.2d 5 (Colo.1982), *In Re Mitan*, 387 N.E.2d 278 (Ill.1979); *Attorney Grievance Commission of Maryland v. Gilbert*, 387 Md. 481, 515 A.2d 454 (Md.1986); *In Re Elliott*, 235 S.E.2d 111 (S.C.1977).

[84] *Matter of Cherryhomes*, 858 P.2d 401 (N.M.1993).

[85] *Matter of Rosen*, 570 A.2d 728 (D.C.App.1989).

[86] *Attorney Grievance Commission v. Keehan*, 533 A.2d 278 (Md.1987).

[87] *Matter of Scavone*, 106 N.J. 542, 524 A.2d 813 (1987).

that disbarment had typically been imposed in cases in which it was discovered that an attorney had given materially false answers on his or her Bar application:

> Candor and honesty are a lawyer's stock and trade. Truth is not a matter of convenience. Some lawyers may find it inconvenient, embarrassing, and even painful to tell the truth. Nowhere is this more important that when an applicant applies for admission to the bar.
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> * * *
>
> 'In all instances, the applicant must display complete candor in all filings and proceedings required by the [bar] . . . ' Anyone who does not grasp that fundamental proposition should not be a lawyer.[88]

As stated *supra*, sanctions are properly imposed upon attorneys who misrepresent themselves in connection with their Bar applications.[89] Petitioners' claim that mitigating factors exist is wholly without merit.

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[88] *Id.*, 524 A.2d at 820 (citations omitted).

[89] *See Matter of Elliott*, 235 S.E. 111 (S.C.1977) (attorney disbarred for giving false information on bar application regarding her place of birth, high school and college background, and criminal record); *In Re Brush*, 250 So. 852 (Fla.1971) (attorney disbarred for falsely stating on his bar application that he had never appeared before any bar organization regarding a disciplinary matter).

CONCLUSION

This Court should deny Petitioners' Petition for Writ of Certiorari to the Louisiana Supreme Court.

Respectfully submitted,

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APPENDIX A

STAMPS, JERRY JACKSON & WITT-STAMPS, TERESA LYNN
2003 2985 (La. 04/14/2004) 874 So.2d 113
Rehearing denied 06/25/2004; CALOGERO, C.J., would grant a rehearing.

SUPREME COURT OF LOUISIANA

NO. 03-B-2985

IN RE: JERRY JACKSON STAMPS

and

IN RE: TERESA LYNN WITT-STAMPS

ATTORNEY DISCIPLINARY PROCEEDINGS

PER CURIAM

This attorney disciplinary proceeding arises from formal charges instituted by the Office of Disciplinary Counsel ("ODC") against respondents, Jerry Jackson Stamps and Teresa Lynn Witt-Stamps. Respondents are married and currently practice law together in the State of Louisiana.

UNDERLYING FACTS

Respondents graduated from law school in May 1998 and applied to take the Louisiana bar examination in the summer of 1998. Respondents failed to pass the bar examination at that time and began preparing to re-take the examination in February 1999.

In October 1998, while studying for the February 1999 examination, respondents learned that Gabrielee Locklear, an attorney licensed to practice in North Carolina, was advertising for law school graduates or associates to work for him in connection with his personal injury law practice. After several telephone conversations, respondents traveled to North Carolina to meet with Mr. Locklear. Thereafter, Mr. Locklear, who knew respondents were not licensed to practice law in North Carolina, contacted respondents to invite them to join his practice.

Following this offer, respondents made additional trips to North Carolina to meet with Mr. Locklear. On December 20, 1998, they signed an employment contract with Mr. Locklear, which was to be effective on January 2, 1999. That contract provided:

> *Employee is hereby hired to perform services for Employer in the capacity of an Associate.* In such practice, Employees' duties shall consist of the general practice of law consistent with the rules of law of the Supreme Court of North Carolina . . . [and] while employed by Employer, *Employees shall use their best efforts to provide legal counsel and service to customers* in the following counties . . . Employees fully and completely understand and accept their obligations under this Agreement . . . During the employment term, the parties will enter into partnership negotiations. . . . For all services rendered by Employees hereunder, Employees shall receive compensation in the amount of $36,000.00 per year per Employee plus ten percent of revenue generated by Employees. . . . [Emphasis added.]

On the same day they executed their employment contract with Mr. Locklear, Mr. Locklear notarized their

applications to sit for the February 1999 Louisiana bar examination. The application to take the bar examination requested information concerning their employment history over the last ten years. Both respondents replied that they had been full time students during this period and did not mention their employment with Mr. Locklear.

Beginning in January 1999, respondents returned to North Carolina on numerous occasions and would stay for periods ranging from a few days to weeks. While it is unclear exactly what functions they performed for Mr. Locklear during this time, the record contains several pieces of evidence concerning their activities. In a letter written on Mr. Locklear's letterhead and dated March 12, 1999, Mrs. Stamps wrote to John Robinson, an insurance adjuster, indicating that "we have been retained by Mr. James D. Williams. . . . " Mrs. Stamps signed the letter, which contained the signature line, "Lynn Stamps, Esq. For the Firm." In another letter, dated April 27, 1999, Mrs. Stamps wrote to the Sabella Chiropractic Clinic, a medical provider, again stating the firm had been retained by Mr. Williams. She signed the letter above the signature line, "Lynn Stamps, Esq." Upon negotiation of the settlement of Mr. Williams' personal injury claim, the insurer adjuster issued a check on May 13, 1999 in the amount of $7,000 made payable to Lynn Stamps as "attorney" for Mr. Williams.

The record also contains checks issued to Mr. or Mrs. Stamps during their employment with Mr. Locklear. Each of the checks was endorsed by Mr. or Mrs. Stamps. In all but one instance, the checks contain notations in the

"memo" section indicating the funds were proceeds and/or fees from a client matter.[1]

Respondents remained with Mr. Locklear's firm until April 1999, at which time Mrs. Stamps passed the Louisiana bar examination. Mrs. Stamps then opened her own law practice.

Mr. Stamps, who did not pass the February 1999 bar examination, applied to sit for the July 1999 examination. In his application to take that examination, he made no mention of his employment with Mr. Locklear. Eventually,

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[1] Checks issued to Jerry Stamps by Mr. Locklear:

Date	Check No.	Check Amt.	Client	Check Memo
12/5/98	3425	$ 438.33	Oxendine, Carl	"PI Proceeds"*
12/7/98	3735	1,125.00	Ikner, Walter & Karlene	"Walter/Kalene I. Fee"*
1/11/99	3792	1,050.00	Patterson, Joseph	"Joseph Patterson"
1/28/99	3554	1,616.66	Peavia, Gail	"Gail Peavia"
2/11/99	3561	3,250.00	Moss, N.	"Nola [illegible]"
4/20/99	3815	3,200.00	Unknown	"Fee"

Checks issued to Lynn Stamps by Mr. Locklear:

Date	Check No.	Check Amt.	Client	Check Memo
1/13/99	3800	$ 575.00	Oxendine, Carl	"Carl Oxedine"
3/8/99	3575	750.00	None	None
1/11/99	3792	1,050.00	Patterson, Joseph	"Joseph Patterson"

Checks issued to Jerry and Lynn Stamps:

Date	Check No.	Check Amt.	Client	Check Memo
12/17/98	3432	$ 500.00	Roger Goodwin	"Goodwin Proceeds"*

*Checks issued prior to the date of respondents' employment contract executed with Mr. Locklear.

Mr. Stamps was admitted to the bar in October 1999, and joined his wife's law practice.

Following respondents' departure from Mr. Locklear's firm, Mr. Stamps wrote letters to Mr. Locklear on behalf of himself and his wife seeking fees purportedly owed to respondents and Mr. Locklear by clients. The letters implied respondents worked on client matters and were still willing to handle the North Carolina cases.[2]

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[2] In a letter, dated June 10, 1999, faxed to Mr. Locklear from Mr. Stamps' fax number, Mr. Stamps wrote on behalf of himself and his wife:

> As you already know, because they were discussed with you on numerous occasions, **while employed as associates with your firm, we worked on six cases for Billy Blackwell.**
>
> * * *
>
> All together, we spent a total of 50 hours on the above cases for Billy Blackwell. As you know at $90 per hour, the legal fees would amount to $4,500.
>
> Billy knows that substantial work was done on all his cases, and you know that substantial work was done on his cases. He called us in Mississippi and asked us to take over his cases, because he said that he had picked up the files from your office. We told him we could not handle his cases because we were no longer with your firm, but that we might rejoin your firm again in July, which is what we agreed upon the last time we talked.
>
> As you know, any money we received from anyone was always discussed with you, and Billy's case was no exception. . . . If Billy still wants us to represent him we would be glad to handle all of his cases if it could be worked out for us to do so. [Emphasis added.]

In another letter, dated June 19, 1999, directed to Mr. Locklear, Mr. Stamps, on behalf of himself and his wife, wrote:

> To clarify, Billy Blackwell signed 3 personal injury retainer agreements. I do not think we should do these cases unless

(Continued on following page)

Disciplinary Investigation

The North Carolina State Bar subsequently conducted a disciplinary investigation into Mr. Locklear's activities in that state. In connection with that investigation, Mr. Locklear stipulated that he split legal fees with Mr. and Mrs. Stamps.[3] The North Carolina State Bar then advised the ODC that Mr. and Mrs. Stamps may have engaged in the unauthorized practice of law in the State of North Carolina.[4]

> we receive money up front, so I informed Billy we needed at least $1,500.00 before we could begin doing any work on the cases.
>
> **As you should recall he phoned you and asked if he could pay in installments, and you told him it was up to me. I told Billy he would have to pay $1,500 so he then called you again and complained that we were too high and that he wanted YOU to handle his case.**
>
> * * *
>
> **I spent a GREAT deal of time on Billy's tobacco case and made numerous phone calls getting medical records, . . .**
>
> One last thing, Rita has called many, many times and I have sent her everything I have on her case. I will be glad to help you with her case, but has she paid? [Emphasis added.]

[3] Mr. Locklear was ultimately disbarred in North Carolina by consent. *North Carolina State Bar v. Gabrielee Locklear, Attorney*, 00-DHC15, Disciplinary Hearing Commission of the North Carolina State Bar.

[4] In correspondence to the ODC, Carolin Bakewell, counsel for the North Carolina State Bar, indicated that North Carolina did not pursue charges against respondents for unauthorized practice of law, noting that they had fled the state. However, Ms. Bakewell wrote:

> You will find enclosed copies of our witness interviews and letters from our file regarding the Stamps' conduct, which I hope you will find helpful. It is difficult to determine which is the biggest scoundrel in this mess: Locklear or the

(Continued on following page)

The ODC took sworn statements from Mr. and Mrs. Stamps. Mrs. Stamps testified that although she signed an employment contract with Mr. Locklear in late 1998, the contract never went into effect because Mr. Locklear advised her he could not pay her. Mrs. Stamps testified she performed some "paralegal/law clerk work" for Mr. Locklear on occasion, but denied ever discussing cases with clients or accepting money from them. Mr. Stamps likewise testified that he did not work on any legal matters from Mr. Locklear and simply assisted him in gathering information for a loan application.

DISCIPLINARY PROCEEDINGS

Formal Charges

After investigation, the ODC filed one count of formal charges against respondents. The charges alleged violations of Rules 5.5(a) (violating the disciplinary regulations of another jurisdiction through the unauthorized practice of law in that jurisdiction), 5.5(b) (assisting a person who is not a member of the bar in the unauthorized practice of law), 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter or bar admission matter), 8.1(b) (failure to respond to a lawful demand for information from an admissions and a disciplinary authority), 8.4(a) (violating or attempting to violate the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving deceit, dishonesty, fraud, or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to

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Stamps, but it is certain that the three of them have caused a great deal of harm to the public in North Carolina.

the administration of justice) of the Rules of Professional Conduct.

Respondents answered, denying any misconduct. They also filed an exception, asserting Louisiana had no jurisdiction over their actions, which occurred in another state prior to their admission to the bar in Louisiana, and a motion to sever their cases. The committee chair referred the exception to the merits and denied the motion to sever. The case then proceeded to a formal hearing.

Formal Hearing

Respondents presented no witnesses at the hearing, nor did they testify on their own behalf, relying instead on their earlier sworn statements. The ODC likewise presented no live testimony, but submitted testimony of its witnesses, all of whom resided outside of the state, by deposition or videotape.

Testimony of Carolin Bakewell

Carolin Bakewell, counsel for the North Carolina State Bar, testified it was her opinion that respondents had split fees with Mr. Locklear. In support, Ms. Bakewell noted that the checks issued by Mr. Locklear to respondents represented exactly 50% of the attorney's fees in the respective cases. She pointed out the North Carolina Disciplinary Hearing Commission specifically rejected Mr. Locklear's argument that the checks simply represented salary payments.

Testimony of Billy Ray Blackwell

Mr. Blackwell testified that he retained respondents to handle six cases on his behalf. Mr. Blackwell stated they quoted a fee of $1,500 to him to handle his legal matters and that he paid Mrs. Stamps $700, and later paid an additional $400. He claimed he consulted with both Mrs. Stamps and Mr. Stamps on numerous occasions. Mr. Blackwell pointed out that Mr. Stamps had "a plaque on the desk saying 'fifty dollar ($50) consultation fee.'" He further testified: "I think I paid'em fifty dollars ($50) a couple of times, because they wouldn't even talk to you unless you paid a consultation fee. . . . " He noted that he never received receipts for the payments. Mr. Blackwell testified that he filed a complaint with the North Carolina State Bar when he concluded that work was never done on his cases. Further, he maintained he was never advised by respondents that they were not licensed to practice law in North Carolina.

Testimony of James Williams

James Williams testified that in March 1999, he hired Mrs. Stamps in connection with an "accident case" against Wallace Trucking. He claimed he was referred to her by Mr. Locklear. Mr. Williams testified that he met with Mrs. Stamps directly, outside of the presence of Mr. Locklear. According to Mr. Williams, Mrs. Stamps never advised him that she did not have a license to practice law in North Carolina. Mr. Williams further denied that Mrs. Stamps ever told him she would be assisting Mr. Locklear; rather, she told him "she was gonna be the lawyer." He testified that she never indicated she would have to consult with Mr. Locklear before she did anything on the case and

advised him her fee would be one-third of any recovery. Mr. Williams stated that he was unclear about the actual settlement amount because he never saw the check from the insurance company. He was paid his portion of the settlement through a check drawn on Mrs. Stamps' personal checking account.[5] Believing Mrs. Stamps was a North Carolina-licensed attorney, he filed a complaint with the North Carolina State Bar to complain about her failure to pay his medical bills pursuant to a lien held by his treating physician, Dr. A.J. Sabella of the Sabella Chiropractic Clinic.

Testimony of Dr. A.J. Sabella

Dr. Sabella corroborated Mr. Williams' testimony that Mr. Williams' medical bills had not been paid. He testified that he had forwarded requests for payment to "Lynn Stamps, Esq." When no payment was made, he filed a disciplinary complaint against Mrs. Stamps with the North Carolina State Bar, assuming she was a licensed attorney.

Testimony of Robin Capps

Robin Capps, an adjuster with Royal and Sun Alliance, testified that she often spoke to Mrs. Stamps and corresponded with her. As early as November 30, 1998, Mrs. Stamps contacted her regarding the personal injury

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[5] It is noteworthy that the claims adjuster issued a check on May 13, 1999 in the amount of $7,000 made payable only to ***"Lynn Stamps, Attorney for John Williams."*** Not only was Mr. Williams' name improperly written as *John* instead of *James*, he was not included as a payee on the check.

settlement of Mr. Locklear's client, Carl Oxedine. She stated she was under the impression that Mrs. Stamps was a licensed attorney, and that she was never advised otherwise.

Recommendation of the Hearing Committee

Following the conclusion of the formal hearing, the hearing committee issued its recommendation. Prior to reaching the merits, the hearing committee discussed respondents' exception, in which they asserted Louisiana lacked jurisdiction because none of the misconduct complained of occurred in Louisiana and respondents were not licensed as attorneys at the time of the alleged misconduct. In rejecting this argument, the committee observed that respondents' alleged misconduct involved failure to disclose information on applications to take the bar examination. The committee concluded they consented to jurisdiction in Louisiana by seeking admission in this state. Accordingly, the committee dismissed the exception.

On the merits, the hearing committee found the ODC proved respondents violated Rules 8.1 and 8.4 by failing to provide truthful responses in their bar applications and engaging in conduct prejudicial to the administration of justice. In particular, the committee found that by December 1998, respondents were well aware that they were going to be working for Mr. Locklear, and they should have disclosed that fact on their applications. Further, even accepting respondents' argument that they had "no employment to disclose" in December 1998, the committee pointed out they had a continuing duty to supplement their applications. In support, the committee relied on Rule 8.1(b), which states that an applicant for admission

"shall not . . . fail to disclose a fact necessary to correct a misapprehension. . . ."

Moreover, based on the evidence in the record, the committee found respondents were clearly employed by Mr. Locklear. It pointed out that they were paid by Mr. Locklear and cited language in the employment contract which referred to them as "employees." The committee rejected respondents' explanations to the contrary as "insincere, unconvincing, and wholly incredible."

As to the allegations of unauthorized practice of law, the committee found Mrs. Stamps engaged in the unauthorized practice of law in North Carolina, although it made no finding that Mr. Stamps had done so. Nonetheless, the committee determined it made no difference whether or not Mr. and/or Mrs. Stamps did or did not practice law in North Carolina for purposes of whether they were required to disclose their employment with Mr. Locklear on their applications to take the bar examination. The committee noted the applications require disclosure of employment, not disclosure of the practice of law.

Having found misconduct, the committee turned to the issue of sanctions. The committee concluded respondents' conduct was knowing. As aggravating factors, it recognized multiple offenses and a refusal to acknowledge the wrongful nature of the conduct. The committee identified no mitigating factors. Based on its findings, the hearing committee recommended that respondents be disbarred from the practice of law.

Recommendation of the Disciplinary Board

Following its independent review of the record, the disciplinary board adopted most of the hearing committee's factual findings.

The board concurred in the committee's legal findings that respondents violated Rules 8.1 and 8.4 by failing to disclose their employment with Mr. Locklear on their applications to take the bar examination. The board determined this finding was supported by the evidence in the record, including the employment contract, letters written by Mr. Stamps regarding the Blackwell matters, testimony of the adjuster for Royal and Sun Alliance that Mrs. Stamps had been working for Mr. Locklear as early as November 30, 1998, and the testimony of Carolin Bakewell, counsel for the North Carolina State Bar, regarding the splitting of fees.

With regard to the unauthorized practice of law allegations, the board agreed with the committee's finding that Mrs. Stamps violated Rule 5.5 by engaging in the unauthorized practice of law in North Carolina. The board further determined the record supported the conclusion that Mr. Stamps also engaged in the unauthorized practice of law in North Carolina. In support, the board relied on the employment contract, the letters written by Mr. Stamps to Mr. Locklear concerning the cases he worked on and the amount of money owed by the clients in the cases, the testimony of Ms. Bakewell concerning the splitting of fees, and the testimony of Mr. Blackwell relative to his various legal matters.

Addressing the issue of an appropriate sanction, the board found that respondents violated a duty owed to their clients, the legal system and the profession, resulting in

significant actual injury. The board determined their unauthorized practice of law caused inadequate and improper representation to the clients, and the disciplinary system suffered undue burden and expense because of respondents' false applications.

The board recognized multiple offenses and refusal to acknowledge the wrongful nature of the conduct as aggravating factors. As mitigating factors, it identified the lack of prior discipline and inexperience in the practice of law. Considering these factors, the board recommended that respondents be suspended from the practice of law for a period of two years.

Two board members dissented as to the leniency of the proposed sanction, finding disbarment to be appropriate under the facts.

The ODC and respondents filed objections to the disciplinary board's recommendation. Accordingly, the matter was docketed pursuant to Supreme Court Rule XIX, § 11(G)(1)(a).

DISCUSSION

Bar disciplinary matters come within the original jurisdiction of this court. La. Const. art. V, § 5(B). Consequently, we act as triers of fact and conduct an independent review of the record to determine whether the alleged misconduct has been proven by clear and convincing evidence. *In re: Quaid,* 94-1316 (La. 11/30/94), 646 So. 2d 343, 348; *Louisiana State Bar Ass'n v. Boutall,* 597 So. 2d 444, 445 (La. 1992).

Procedural Issues

Prior to addressing the merits, we must consider several procedural issues raised by respondents. First, they assert this court lacks jurisdiction to consider their actions, which occurred outside of this state prior to their admission to the practice of law. Secondly, they contend that the hearing committee erred in denying their motion to sever their cases. Finally, they urge the hearing committee erred in admitting hearsay evidence. We will address these matters in turn.

Exception of Lack of Jurisdiction

It is well settled that this court has exclusive and plenary power to define and regulate all facets of the practice of law, including the admission of attorneys to the bar. *Bester v. Louisiana Supreme Court Comm. on Bar Admissions,* 00-1360 (La. 2/21/01), 779 So. 2d 715; *In re Bar Exam Class Action,* 99-2880 (La. 2/18/00), 752 So. 2d 159; *Succession of Wallace,* 574 So. 2d 348, 350 (La. 1991); *Ex Parte Steckler,* 179 La. 410, 154 So. 41 (1934). Pursuant to that authority, we adopted Rule 8.1 of the Rules of Professional Conduct, which places an explicit duty on an "applicant for admission to the bar" to refrain from knowingly making false statements of material fact on an application for admission and to disclose facts necessary to correct any misapprehensions arising in such a matter. The comments to Rule 8.1 provide, in pertinent part:

> The duty imposed by this Rule extends to persons seeking admission to the bar as well as lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted . . .

The obvious purpose for this disclosure requirement is to provide this court with the information it needs to make an informed determination of whether the applicant possesses sufficient character and fitness to be admitted to the practice of law in this state. Information relating to an applicant's employment, especially the applicant's employment in a legal setting, is particularly relevant. Supreme Court Rule XVII, § 5(C) indicates an applicant's "misconduct in employment" and "commission of an act constituting the unauthorized practice of law" are factors to be considered in determining whether an applicant possesses the requisite character and fitness to be admitted to the bar.

Clearly, this court has jurisdiction to discipline a lawyer when it is subsequently determined the lawyer deprived this court in the bar admission process of vital information relative to whether the individual possessed the necessary character and fitness for admission. To hold otherwise would encourage applicants to withhold information during the application process. Our review of the jurisprudence of our sister states indicates they have reached similar conclusions. *See Matter of Cherryhomes,* 858 P.2d 401 (N.M. 1993) (New Mexico Supreme Court indefinitely suspended an attorney who, among other things, forged a physician's signature on a certificate of fitness required by the bar application process in another state); *Matter of Rosen,* 570 A.2d 728 (D.C. App. 1989) (nine-month suspension from practice imposed on an attorney for failure to supplement his Maryland bar application to indicate he was under investigation for professional misconduct in another state where he was admitted to practice); *Matter of Scavone,* 524 A.2d 813 (N.J. 1987) (attorney disbarred for falsely indicating on his

bar application that he had never been subjected to disciplinary action or asked to withdraw from an educational institution, when the attorney was removed from a law school); *In re: Chandler,* 641 N.E.2d 473 (Ill. 1994) (three-year suspension imposed on an attorney who failed to disclose on her bar application that she provided false information on a mortgage loan application, as well as misstated her social security number in her bar application); *State ex rel. Oklahoma Bar Ass'n v. Flanery,* 863 P.2d 1146 (Okla. 1993) (disbarment imposed on an attorney for embezzlement of $71,000 from family members prior to admission to the bar); *Office of Disciplinary Counsel v. Zdrok,* 645 A.2d 830 (Pa. 1994) (attorney suspended for six months for pre-admission conduct of criminal loitering).

Accordingly, we see no merit to the exception of lack of jurisdiction and therefore deny it.

Motion to Sever

Mr. and Mrs. Stamps assert the hearing committee erred in failing to grant their motion to sever the cases against them. They contended there was a possibility of confusion if the evidence against them was heard at the same time.

The ODC opposed the motion to sever, arguing that Mr. and Mrs. Stamps were charged together because they acted together in a common scheme. The ODC suggested the evidence in the case would not be complex and the hearing committee would have no difficulty determining whether a witness was referring to individual actions taken by Mr. Stamps or Mrs. Stamps.

The hearing committee denied the motion to sever. Mr. and Mrs. Stamps now seek review of that ruling.

As a threshold matter, we note that the Stamps were well aware that they were charged together at the time of the filing of the formal charges on April 16, 2001. Notwithstanding, they did not file their motion to sever until September 10, 2001, over five months later and less than three weeks before the hearing was set to commence.

Turning to the merits of the motion, we find no indication from the record that Mr. and Mrs. Stamps were prejudiced in any way as a result of the joint hearing. Mr. and Mrs. Stamps did not present antagonistic defenses; indeed, both were represented by the same counsel throughout these proceedings. The record reveals the witnesses clearly distinguished the actions of Mr. and Mrs. Stamps in their testimony. Likewise, the hearing committee and disciplinary board drew distinctions between the two in their reports. Thus, there is no support in the record for the conclusion that the joint hearing created any confusion.

In sum, we find respondents have produced no evidence of prejudice which would have required a severance of the charges against them. Accordingly, the motion to sever was properly denied.

Evidentiary Issues

Respondents argue the hearing committee erred in considering various evidence which they contend are subject to hearsay objections. Specifically, respondents object to certain unauthenticated records, as well as

evidence and the findings of fact in Mr. Locklear's disciplinary case.

In response, the ODC asserts that the documents are not inherently unreliable since they were either admitted in the North Carolina disciplinary proceedings, produced from insurance company files, or submitted by respondents themselves. The ODC further points out that respondents did not object to the admission of many of these documents, or objected with the assertion that they would explain these matters in their testimony.

In general, disciplinary proceedings are subject to the provisions of the Code of Evidence. Supreme Court Rule XIX, § 18(B). However, in *In re: Quaid,* 94-1316 at p. 8, n. 2 (La. 11/30/94), 646 So. 2d 343, 348, we observed that the unique position of this court as trier of fact in disciplinary proceedings lessened the need for strict application of those provisions of the Code of Evidence such as hearsay, which were primarily intended to govern jury trials:

> We note, however, that the purpose of rules of evidence primarily intended to govern jury trials, particularly the hearsay rules, are less compelling in the context of imposing discipline on members of the legal profession. This Court retains power to determine the ultimate question of admissibility under its original jurisdiction as the triers of fact in disciplinary proceedings, and it may well be more appropriate in disciplinary proceedings to be guided but not confined by strict application of the Code of Evidence. **See In re: Huddleston**, 595 So. 2d 1141, 1148 (La. 1992) (concurring opinion). We observe that such an approach has been taken in other jurisdictions. **See, e.g., In re Kennedy**, 605 A.2d 600, 603 (D.C.App. 1992); **The Florida Bar v.**

Vannier, 498 So. 2d 896, 898 (Fla. 1986); **Werner v. State Bar**, 150 P.2d 892, 893-94 (Cal. 1944).

Unlike a lay jury, this court, in its role as trier of fact in disciplinary cases, has the ability to consider the entire record and evaluate and weigh the probative value of evidence based on the totality of the circumstances. Considering the record as a whole, we find the hearing committee did not err in admitting the disputed evidence.

Factual and Legal Findings

Having disposed of the procedural objections, we now review the record to determine if the charges against respondents have been proven by clear and convincing evidence. The critical issue for purposes of our inquiry is whether respondents were employed by Mr. Locklear, such that their failure to disclose this employment resulted in a violation of Rule 8.1.

Respondents have repeatedly denied that they were employed by Mr. Locklear, asserting that they were never paid by him. The hearing committee found this defense to be "insincere, unconvincing, and wholly incredible."[6] Based on the overwhelming evidence of employment in the record, we find the committee's assessment to be entirely accurate.

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[6] For example, Mr. Stamps initially denied ever receiving a "penny" from Mr. Locklear and emphatically denied ever being given any checks by Mr. Locklear. When the ODC produced copies of the checks, Mr. Stamps then claimed these checks were simply for "travel expenses" and denied even knowing the clients listed on the checks. In the face of such glaring inconsistencies, it is difficult to find such testimony credible.

In addition to the employment contract with Mr. Locklear, which is signed by both Mr. and Mrs. Stamps, the record contains copies of six checks issued by Mr. Locklear to Mr. Stamps, three checks issued by Mr. Locklear to Mrs. Stamps, and one check issued by Mr. Locklear to respondents jointly. With one exception, each of the checks bears a notation indicating it was payment for a client matter.

Additionally, the ODC produced copies of correspondence written by Mr. Stamps to Mr. Locklear, in which he stated that "while employed as associates with your firm, we worked on six cases for Billy Blackwell." This correspondence was corroborated by testimony from Mr. Blackwell, who stated unequivocally that he consulted with both Mr. and Mrs. Stamps regarding legal matters.

Considering the overwhelming evidence, it simply flies in the face of logic and common sense for respondents to assert that they did not believe they were employed by Mr. Locklear. Respondents' failure to disclose their employment with Mr. Locklear on their bar applications or supplement their applications to reveal it leads to the inescapable conclusion that they knowingly sought to withhold this information from this court.

We further find that the record convincingly demonstrates that respondents' failure to disclose their employment prevented this court from obtaining access to information which had a significant bearing on their character and fitness – namely, whether they engaged in the unauthorized practice of law while working in the law office of Mr. Locklear. The evidence suggests an investigation would have clearly revealed both Mr. and Mrs.

Stamps engaged in the unauthorized practice of law in North Carolina.

With regard to Mr. Stamps, as noted earlier, the record contains copies of five checks issued to him by Mr. Locklear, four of which contain notations relating to fees for client matters. Mr. Blackwell testified that he met with Mr. Stamps concerning legal matters and was led to believe that Mr. Stamps was an attorney. Mr. Stamps' own correspondence to Mr. Locklear identifies Mr. Stamps (and his wife) as "associates with your firm" and discusses work done on Mr. Blackwell's legal matters.

As to Mrs. Stamps, the testimony of Mr. Blackwell, Mr. Williams, Ms. Capps, and Dr. Sabella all demonstrate that Mrs. Stamps gave the clear impression that she was a licensed attorney. The record includes correspondence drafted and signed by Mrs. Stamps on behalf of Mr. Locklear's law firm. These letters identify Mrs. Stamps as "Esq.," a title commonly used by lawyers.

In summary, based on the overwhelming evidence, we conclude that in connection with the bar application process, respondents knowingly concealed from this court information relating to their employment. This failure to disclose prevented this court from discovering information regarding their unauthorized practice of law in another state, an issue which has a critical bearing on their character and fitness.

Sanctions

Having found professional misconduct, we now turn to a determination of the appropriate sanction for this misconduct. In addressing the issue of sanctions, we are

mindful that the purpose of disciplinary proceedings is not primarily to punish the lawyer, but rather to maintain the appropriate standards of professional conduct, to preserve the integrity of the legal profession, and to deter other lawyers from engaging in violations of the standards of the profession. *In re: Vaughan,* 00-1892 (La. 10/27/00), 772 So. 2d 87; *In re: Lain,* 00-0148 (La. 5/26/00), 760 So. 2d 1152. The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved, considered in light of any aggravating and mitigating circumstances. *In re: Redd,* 95-1472 (La. 9/15/95), 660 So. 2d 839.

It is difficult to understate the seriousness of the misconduct in this case. Through their knowingly deceitful actions, respondents have sought to frustrate this court's ability to make an informed determination of their character and fitness prior to admitting them to the bar of this state. Their actions impede the fundamental responsibility of this court to assure the protection of the public and to safeguard the administration of justice. *See* Supreme Court Rule XVII, § 5(A); *In re: Singer,* 01-2776 (La. 6/12/02), 819 So. 2d 1017. As the Supreme Court of New Jersey observed in *In re: Scavone,* 524 A.2d 813 (1987):

Candor and honesty are a lawyer's stock and trade. Truth is not a matter of convenience. Sometimes lawyers may find it inconvenient, embarrassing, or even painful to tell the truth. Nowhere is this more important than when an applicant applies for admission to the bar.

By ignoring their fundamental duty of candor to this court at the very inception of their legal career and by victimizing clients in another state, respondents have convincingly demonstrated they lack the good moral

character to practice law in Louisiana. Unquestionably, the baseline sanction for such misconduct is disbarment.

As aggravating factors, we recognize the continuous refusal of respondents to acknowledge the wrongful nature of their conduct.[7] We find no mitigating factors from the record.[8]

Under these circumstances, we would be remiss in our constitutional duty to protect the citizens of this state if we did not remove respondents from the practice of law. Accordingly, we must disbar respondents.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, briefs, and oral argument, it is ordered that the names of Jerry Jackson Stamps, Louisiana Bar Roll No. 26521, and Teresa LynnWitt-Stamps, Louisiana Bar Roll No. 26146, be stricken from the roll of attorneys and that their licenses to practice law in the State of Louisiana be revoked. All costs and expenses in the matter are assessed against respondents in accordance with

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[7] Indeed, rather than acknowledging their misconduct, it appears respondents may have made deliberate misrepresentations or untruthful statements in their sworn statements.

[8] The disciplinary board recognized inexperience in the practice of law and lack of a prior disciplinary record as mitigating factors. We find absolutely no basis to consider these factors in mitigation. Respondents' inexperience has no bearing on their failure to disclose basic information on their applications to take the bar examination. Likewise, the lack of a prior disciplinary record holds little sway, considering the fact that the misconduct occurred at the very inception of respondents' legal career in this state.

Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

KIMBALL, Justice, concurring.

I agree with the result reached by the majority in this case; however, in my view, the correspondence between Mr. Stamps and Mr. Locklear should not have been considered as evidence against Mrs. Stamps. Even under a more relaxed application of the provisions of the Code of Evidence in disciplinary matters, I believe that letters written by one defendant, Mr. Stamps, still constitute hearsay evidence that should not be used as substantive proof to implicate another defendant, Mrs. Stamps. However, absent the letters, I agree that the record presents overwhelming evidence of both Mr. and Mrs. Stamps' professional misconduct. Therefore, I concur in the result reached by the majority.

APPENDIX B

STAMPS, JACKSON & WITT-STAMPS, TERESA LYNN 01-DB-039 (10/27/2003)

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: JERRY JACKSON STAMPS AND TERESA LYNN WITT-STAMPS

NUMBER 01-DB-039

RECOMMENDATION TO THE LOUISIANA SUPREME COURT

This is a disciplinary proceeding based upon the filing of formal charges against the Respondents, Jerry Jackson Stamps and Teresa Lynn Witt-Stamps, by the Office of Disciplinary Counsel ("ODC"). For reasons stated below, the Disciplinary Board recommends that the Respondents be suspended from the practice of law for a two year period and assessed with all costs and expenses of these proceedings.

PROCEDURAL HISTORY

Formal charges, consisting of one count, were filed against the Respondents by ODC on April 16, 2001. The charges allege that in 1999 the Respondents engaged in the unauthorized practice of law in North Carolina prior to their admission to the Louisiana Bar in violation of Rules of Professional Conduct 5.5(a) (practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction) and 5.5(b) (assisting a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law). The charges also allege that the Respondents omitted significant

and relevant information (i.e., the fact that they had worked in North Carolina) from their applications to take the Louisiana bar examination in violation of Rules of Professional Conduct 8.1(a) (knowingly making a false statement of material fact in connection with a bar admission matter), 8.1(b) (failing to disclose a fact necessary to correct a misapprehension in a bar admission matter), 8.4(a) (violating the Rules of Professional Conduct), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and 8.4(d) (engaging in conduct that is prejudicial to the administration of justice).

The Respondents filed separate responses to the formal charges on May 7, 2001. They also filed interrogatories directed to ODC on the same date. ODC filed its responses to the interrogatories on May 10, 2001. The hearing in this matter was originally set for July 20, 2001, but later continued upon the motion of Respondents and reset on September 25, 2001. In the meantime, the Respondents filed peremptory exceptions on June 15, 2001[1]. ODC filed its opposition to the peremptory exceptions on June 22, 2001. The Respondent filed a reply to ODC's opposition to the peremptory exceptions on July 2, 2001. The Respondent also filed a motion for expedited hearing of the exceptions on July 16, 2001. A ruling on the exceptions was deferred to the hearing by the hearing committee chair, David Rubin. At the hearing, Mr. Rubin denied the exceptions, without prejudice.

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[1] In their exceptions, the Respondents contend that the formal charges should be dismissed because none of the alleged misconduct occurred in the State of Louisiana and because the Respondents were not attorneys practicing law in the State of Louisiana at the time the alleged misconduct occurred.

On September 10, 2001, the Respondents filed a motion to sever the case as to each respondent. ODC filed its opposition to the motion to sever on September 11, 2001. The motion to sever was denied by the hearing committee chair on September 20, 2001. ODC filed its pre-hearing memorandum on September 17, 2001. The Respondents filed their pre-hearing memorandum on September 18, 2001.

The hearing was held as scheduled on September 25, 2001. The Respondents filed a post-hearing memorandum on October 18, 2001. ODC filed a rebuttal post-hearing memorandum on October 22, 2001. The Respondents filed a reply to ODC's memorandum on October 29, 2001.

The hearing committee issued its findings and recommendations on July 11, 2002, recommending that the Respondents be disbarred. ODC filed a response to the hearing committee's report on August 15, 2002, stating that it agreed with the report of the hearing committee. The Respondents filed an objection to the hearing committee's report on September 27, 2002. ODC filed a reply to the objection on October 2, 2002. Oral argument was held on October 24, 2002 before Panel C of the Disciplinary Board.

THE FORMAL CHARGES

COUNT I

On or about December 20, 1998, both of you executed a contract of employment with Gabrielee Locklear, then a North Carolina licensed attorney, whereby both of you were to commence working for Mr. Locklear, as associates. Your duties, as set forth in the contract, were to consist

of the general practice of law. You both commenced working for Mr. Locklear on or about January 2, 1999 at his Maxton, North Carolina office. Between that date and about April 20, 1999, you both engaged in activities constituting the practice of law, including one or more of the following: negotiating with opposing parties; advising clients; and charging and collecting fees. Neither of you have ever been licensed to practice law in North Carolina. On December 20, 1998, you both made application to take the Louisiana bar exam. The applications were executed in Maxton, North Carolina, and were notarized by Mr. Locklear. Neither of you included any mention of either your association, or your activities while associated, with Mr. Locklear in your Louisiana bar exam applications. Neither of you amended your applications to include that information. Jerry Jackson Stamps did not include any mention of either his association, or his activities while associated, with Mr. Locklear in his May 17, 1999 application to take the Louisiana bar exam. Teresa Lynn Witt-Stamps was licensed to practice law in Louisiana on April 23, 1999. Jerry Jackson Stamps was licensed to practice law in Louisiana on October 15, 1999. Both of you have engaged in the unauthorized practice of law, and have omitted significant and relevant information from your applications to take the Louisiana bar exam. Your conduct violated Rules 5.5(a)(b); 8.1(a)(b); and 8.4(a)(c)&(d) of the Rules Of Professional Conduct.

THE HEARING COMMITTEE'S REPORT

As noted above, the hearing committee issued its report on July 11, 2001, recommending that both Respondents be

disbarred from the practice of law. The committee found that Respondents had violated Rule 8.1(a)(b) and 8.4(a)(c)(d) in connection with statements made on their bar applications. Specifically, the hearing committee found that Mr. Stamps' applications dated December 20, 1998 and May 17, 1999 and Mrs. Stamps' application dated December 20, 1998 contained untruthful answers to question 13, which asks for the "names and addresses of those by whom you have been employed in the past ten years and period of each employment." The committee noted that "By December, 1998, both Respondents were well-aware that they were going to be working for Mr. Locklear, and they should have disclosed that fact on their applications." The committee continued that:

> "... the December, 1998 applications were signed in the same time frame that Mrs. Stamps testified that the details of her and her husband's employment with Locklear were being finalized. Certainly as of December, 1998, we believe that Respondents knew that they were embarking on some sort of employment relationship with Locklear. Even if we were to believe that Respondents had "no employment to disclose" in December, 1998, Respondents had a duty to seasonably supplement their bar applications with the particulars of their employment. A failure to supplement a bar application with subsequent information that would make an application correct is, to us, the same as knowingly answering an application question untruthfully. Rule 8.1(b) states that an applicant for admission 'shall not ... fail to disclose a fact necessary to correct a misapprehension....' And as we have already noted, the application of Mr. Stamps dated May, 1999 clearly was untruthful."

The committee also noted that it believed that the evidence supported a Rule 5.5 violation concerning the unauthorized practice of law, at least as to Mrs. Stamps, based upon the letters written by the Respondents to Mr. Locklear dated June 10, 1999 and June 19, 1999. These letters described the work performed on behalf of a client, Mr. Blackwell, while the Respondents were "employed as associates" at Mr. Locklear's firm. (ODC Exhibits 9A and 9B). In its discussion of which sanction would be appropriate, the committee also noted that "at least Mrs. Stamps did in fact practice law in North Carolina without a license."

Applying ABA *Standards for Imposing Sanctions* 7.0, 7.1, and 6.21[2], the committee found that the baseline sanction

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[2] The ABA *Standards for Imposing Lawyer Sanctions* provide:

7.0 Violations of Other Duties Owed as a Professional

> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.

7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the lawyer or another, and causes services or potentially serious injury to a client, the public, or the legal system.

> Commentary
>
> Disbarment should be imposed in cases when the lawyer knowingly engages in conduct that violates a duty owed to the profession with the intent to benefit the lawyer or another, and which causes serious injury or potentially serious injury to a client, the public or the legal system. For example,

(Continued on following page)

here was disbarment. The committee noted that no mitigating factors were present and that "it could well be argued that [the] aggravating factors of multiple offenses and a refusal to acknowledge the wrongful nature of the misconduct" were present.

RESPONSES TO THE HEARING COMMITTEE'S REPORT

On September 27, 2002, the Respondents filed an objection to the hearing committee's report, arguing that numerous errors were made by the hearing committee. ODC agrees with the hearing committee's report, but concedes in its brief filed in reply to the Respondents' objection that some minor factual errors were made by the committee.[3] However, ODC reiterates its position that Mr.

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disbarment is appropriate when a lawyer intentionally makes false material statements in his application for admission to the bar. . . .

6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

[3] ODC basically agrees that Errors # 1 and #2 as noted in Respondents' objection on page 6 are present. As to the first error, the hearing committee indicates that Mrs. Stamps graduated from law school in May, 1998, having done undergraduate work at various colleges, including Yale and Duke University. The record shows that Mrs. Stamps did undergraduate work and obtained an undergraduate degree from Lynchburg College. The work which she did at Yale University culminated in her obtaining a masters degree in Ethics. The work that she did at Duke University was work towards a masters degree in Theology, with no thesis.

As to the second error, the hearing committee states in its report that Mr. Stamps' educational background included undergraduate work at Utah State University. The hearing committee's report does not

(Continued on following page)

and Mrs. Stamps made serious misrepresentations in their December, 1998 bar applications and Mr. Stamps in his May, 1999 bar application by failing to list their employment with Mr. Locklear in North Carolina and that Mr. and Mrs. Stamps' pre-admission misconduct consisting of the unauthorized practice of law in North Carolina provides a basis for sanctions.

ANALYSIS

I. THE STANDARD OF REVIEW

The powers and duties of the Disciplinary Board are defined in Section 2 of the Louisiana Supreme Court Rule XIX, Rules for Lawyer Disciplinary Enforcement. Subsection (G)(2)(a) states that the Board is "to perform appellate review functions, consisting of review of the findings of fact, conclusions of law, and recommendations of hearing committees with respect to formal charges . . . and prepare and forward to the court its own findings, if any, and recommendations." Inasmuch as the Board is serving in an appellate capacity, the standard of review applied to findings of fact is that of "manifest error." *Arceneaux v. Domingue*, 365 So. 2d 1330 (La.1978); *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989). The Board conducts a *de novo* review of the hearing committee's application of the Rules of Professional Conduct. *In re Hill*, 90-DB-004. A review of the record indicates that the hearing committee's findings of fact are correct, save errors #1 and 2 in the Respondent's objection noted in footnote #3 above. As discussed

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indicate that Mr. Stamps obtained a masters degree in Ethics from Yale University and that he did work towards a masters degree in Theology at Duke University.

below, the Board will supplement the committee's findings of fact to include the factual finding that Mr. Stamps also engaged in the unauthorized practice of law in North Carolina.

The committee's application of the Rules of Professional Conduct appear to be proper, save the committee's failure to find that violations of Rules 8.4(c) and 8.4(d) also are present as to the unauthorized practice of law charges proven against Mr. and Mrs. Stamps. The Board further finds that the mitigating factors of lack of prior discipline and inexperience in the practice of law are present in this matter. The Board agrees with the hearing committee that the aggravating factors of multiple offenses and a refusal to acknowledge the wrongful nature of the misconduct are also present.

II. THE BAR APPLICATION CHARGES

The Board finds that the hearing committee's determination that Mr. Stamps' answer to question #13 on his May 17, 1999 bar application was untruthful is correct. As noted above, question 13 of the bar application asks for the "names and addresses of those by whom you have been employed in the past ten years and period of each employment." The evidence indicates that Mr. Stamps was employed by Mr. Locklear at least from January of 1999 until April of 1999 but failed to list this employment on his May 17, 1999 application. Evidence of Mr. Stamps' employment includes the employment contract signed by Mr. Stamps, Mrs. Stamps and Mr. Locklear dated January 2, 1999 (ODC Exhibit 3), the letters written by Mr. Stamps to Mr. Locklear concerning the cases he worked on and the amount of money owed by the clients in the cases (ODC

Exhibits 9A and 9B), the testimony of Ms. Bakewell, disciplinary counsel for the North Carolina State Bar, concerning the alleged splitting of fees between Mr. Locklear and Mr. Stamps and Mrs. Stamps during the time period ranging from December, 1998 until April, 1999, and the testimony of Mr. Blackwell concerning Mr. Stamps' representation in his various matters during and before this same time period. As to Mr. Stamps, the committee correctly found that he violated Rules 8.1(a)(b) and 8.4(a)(c)(d) in connection with his May 17, 1999 application.

More specifically, the Board notes the following reasons for the above-cited violations:

Rule 8.1(a): By failing to list Mr. Locklear as an employer in his May 17, 1999 bar application, Mr. Stamps knowingly made a false statement of material fact in connection with a bar admission application.

Rule 8.1(b): By failing to disclose the facts necessary to correct this error, Mr. Stamps also violated this rule.

Rule 8.4(c): By failing to list Mr. Locklear as an employer in his May 17, 1999 bar application, Mr. Stamps engaged in conduct involving deceit or misrepresentation.

Rule 8.4(d): Mr. Stamp's failure to accurately list his previous employer, Mr. Locklear, involved conduct that was prejudicial to the administration of justice. Because of this omission, the bar admissions committee was not afforded the opportunity to fully investigate his background in order to determine if he was qualified to become an officer of the court. As noted earlier, this conduct was deceitful and misleading to the bar admissions committee. In the past, courts have found conduct that is deceptive

and misleading to be conduct prejudicial to the administration of justice.[4] *See Harrington,* 585 So.2d 514 (conduct involving misleading comments to court and opposing counsel); *Louisiana State Bar Association v. Roussel*, 545 So.2d 989 (La. 1989) (conduct involving deceit to conceal neglect of legal matter); *State ex rel. Oklahoma Bar Association v. Hensley*, 661 P.2d 527 (Okla. 1983) (failure to reveal facts); *In re James*, 452 A.2d 163 (D.C. 1982), *cert. denied*, 460 U.S. 1038, 103 S.Ct. 1429, 75 L.Ed.2d 789 (1983) (misleading court); *Toledo Bar Association v. Fell*, 51 Ohio St.2d 33, 364 N.E. 2d 872 (1977) (deception of court). Now, years later, Mr. Stamps' actions have caused not only the disciplinary system, but also the Court, to expend time and expense examining his omission and his actions surrounding his misconduct.

Rule 8.4(a): By violating the rules noted above, the Respondent also violated this rule, which makes it professional misconduct for a lawyer to "violate or attempt to violate the Rules of Professional Conduct."

The hearing committee also found that the Respondents violated Rules 8.1(a)(b) and 8.4(a)(c)(d) in connection with their December 20, 1998 applications. Although the employment contract entered into between Mr. Locklear and Mr. and Mrs. Stamps states that it "is entered into as of January 2, 1999," Mrs. Stamps testified that the contract

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[4] The Court in *Louisiana State Bar Association v. Harrington,* 585 So.2d 514 (La. 1990) noted that the "proscription against conduct that is prejudicial to the administration of justice, while phased somewhat broadly, involves, in most but not all cases, misconduct during litigation." While the misconduct at issue does not fall with the spectrum of conduct during litigation, the Board finds that it is sufficiently related to the administration of justice to fall within the ambit of Rule 8.4(d).

was signed before Christmas in December of 1998. Mr. and Mrs. Stamps' bar applications were signed and notarized by Mr. Locklear on December 20, 1998. The testimony of Robin Capps, insurance adjuster for Royal and Sun Alliance Insurance Companies, indicates that Ms. Stamps was working for Mr. Locklear as early as November 30, 1998, when she contacted Ms. Capps concerning a settlement offer on behalf of one of Mr. Locklear's clients, Carl Oxendine. Clearly, Ms. Stamps' answer to question #13 of the December 1998 application was untruthful; she had worked for Mr. Locklear just prior to completing the application but did not disclose this fact.

As to Mr. Stamps' answer to question #13 on the December 1998 application, the Board agrees with the hearing committee that certainly as of December, 1998, Mr. Stamps knew that he was embarking on some sort of employment relationship with Mr. Locklear. The Board also agrees that even if it was to believe that Mr. Stamps had "no employment to disclose" in December, 1998, Mr. Stamps had a duty to seasonably supplement his bar applications with the particulars of his employment. A failure to supplement a bar application with subsequent information that would make an application correct is the same as knowingly answering an application question untruthfully. As pointed out by the hearing committee, Rule 8.1(b) states that an applicant for admission "shall not . . . fail to disclose a fact necessary to correct a misapprehension . . . ". Based on the above, the hearing committee correctly found that the Respondents violated Rules 8.1(a)(b) and 8.4(a)(c)(d) in connection with their December 20, 1998 applications. More specifically, the Board finds that the above-cited rules were violated for the following reasons:

Rule 8.1(a): By failing to list her previous employment (Ms. Stamps) and impending employment (Mr. Stamps) with Mr. Locklear in their December 20, 1998 applications, the Respondents violated this rule by knowingly making a false statement of material fact in connection with a bar admission application.

Rule 8.1(b): By failing to correct this error in their applications, the Respondents violated this rule.

Rule 8.4(c): By failing to list their employment with Mr. Locklear in the December 20, 1998 applications, the Respondents engaged in conduct involving deceit and misrepresentation.

Rule 8.4(d): The Respondents' failure to accurately list Mr. Locklear as their employer involved conduct that was prejudicial to the administration of justice. As noted above, because of this omission, the bar admissions committee was not afforded the opportunity to fully investigate their background in order to determine if they were qualified to become officers of the court. This conduct was deceitful and misleading to the bar admissions committee. Courts have found conduct that is deceptive and misleading to be conduct prejudicial to the administration of justice. *See Harrington,* 585 So.2d 514; *Roussel*, 545 So.2d 989; *Hensley*, 661 P.2d 527; *James*, 452 A.2d 163; *Fell*, 51 Ohio St.2d 33, 364 N.E. 2d 872 (1977). Now, years later, their actions have caused not only the disciplinary system, but also the Court, to expend time and expense examining their omissions and their actions surrounding this misconduct.

Rule 8.4(a): By violating the rules noted above, the Respondents also violated this rule, which makes it

professional misconduct for a lawyer to "violate or attempt to violate the Rules of Professional Conduct."

III. THE UNAUTHORIZED PRACTICE OF LAW CHARGES

As explained in the hearing committee's report, the evidence clearly indicates that Mrs. Stamps improperly practiced law while employed with Mr. Locklear in North Carolina (*See* ODC Exhibits 9A and 9B). The evidence also shows that Mr. Stamps practiced law while in North Carolina as well.[5] Evidence of Mr. Stamps' employment and unauthorized practice includes the employment contract signed by Mr. Stamps, Mrs. Stamps and Mr.

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[5] North Carolina defines the practice of law as follows:

"The phrase 'practice of law' as used in this chapter is defined to be performing any legal service for any other person, firm, or corporation with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, or assisting by advice, counsel or otherwise in any such legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase 'practice of law' shall not be construed to limit the foregoing general definition of such term, but shall be construed to include the foregoing particular acts, as well as all other acts within said general definition." Section 84-2.1. "Practice law" defined.

Except as otherwise provided by law, only "active members of the Bar of the State of North Carolina admitted and licensed to practice as attorneys-at-law" may engage in the practice of law. Section 84-4.

Locklear (ODC Exhibit 3)[6], the letters written by Mr. Stamps to Mr. Locklear concerning the cases he worked on and the amount of money owed by the clients in the cases (ODC Exhibits 9A and 9B), the testimony of Ms. Bakewell concerning the alleged splitting of fees between Mr. Locklear, Mr. Stamps and Mrs. Stamps and the testimony of Mr. Blackwell concerning Mr. Stamps' representation in his various matters. As such, a violation of Rule 5.5(a) is present as to both Respondents.

The Board also finds that such misconduct violates Rules 8.4(c) and 8.4(d). Respondents' falsely holding themselves out to their clients and other parties as being licensed and admitted to practice law in North Carolina when, in fact, they were not was dishonest, fraudulent and deceitful in violation of Rule 8.4(c). Further, practicing law while unauthorized to do so constitutes conduct prejudicial to the administration of justice in violation of Rule 8.4(d). Such conduct harms both the client and the legal system as inadequate and improper representation is rendered to the client. Such conduct is also deceptive and misleading. As stated above, courts have found conduct that is deceptive and misleading to be conduct prejudicial to the administration of justice. *See Harrington,* 585 So.2d 514; *Roussel,*

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[6] The Respondents' employment contract with Gabrielee Locklear provided in part that:

> ". . . Employee is hereby hired to perform services in the capacity of an Associate. In such practice, Employees' duties shall consist of general practice of law consistent with the rules of the Supreme Court of North Carolina. While employed by Employer, Employees shall use their best efforts to provide legal counsel and service to the customers in the following counties: Robeson County, Scotland County, and Hoke County . . . "

545 So.2d 989; *Hensley*, 661 P.2d 527; *James*, 452 A.2d 163; *Fell*, 51 Ohio St.2d 33, 364 N.E. 2d 872 (1977).

IV. THE ISSUE OF DISCIPLINE FOR PRE-ADMISSION CONDUCT

The Board now turns to the issue of whether a lawyer can be disciplined for pre-admission conduct. Louisiana jurisprudence is silent on this issue. ODC has cited several cases from other jurisdictions supporting this proposition. The rationale for such discipline appears to be that the courts have "jurisdiction to discipline an attorney for conduct occurring prior to his admittance if [the conduct] showed his present unfitness to practice law." *State of Oklahoma ex rel. Oklahoma Bar Association v. Flanery*, 863 P.2d 1146 (Okla. 1993) (Supreme Court of Oklahoma held that it had jurisdiction to discipline attorneys for actions taken before licensure and that the attorney's pre-admission conduct of embezzling $71,000 from family members before joining the bar warranted disbarment). *See also Office of Disciplinary Counsel v. Zdrok*, 645 A.2d 830 (Pa. 1994) (Pennsylvania Supreme Court suspended an attorney for six months based in part upon his pre-admission conduct of nighttime loitering and prowling in violation of a criminal statute for which he was convicted after he was admitted to the bar); *Stratmore v. State Bar of California*, 123 Cal. Rptr. 101 (Cal. 1975) (California Supreme Court held that attorney could be disciplined even though the misconduct may have preceded admission to practice). The Board will follow the above states' lead, and will recommend to the Court that the Respondents be subject to sanctions for their untruthful answers on their bar applications and their pre-admission unauthorized practice of law in North Carolina.

V. THE APPROPRIATE SANCTION

a. Application of the Rule XIX, Section 10(c) Factors

Louisiana Supreme Court Rule XIX, Section 10(C) states that in imposing a sanction after a finding of lawyer misconduct, the Court or Board shall consider the following factors:

(1) whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

(2) whether the lawyer acted intentionally, knowingly, or negligently;

(3) the amount of actual or potential injury caused by the lawyer's misconduct; and

(4) the existence of any aggravating or mitigating factors.

Here, the Respondents violated a duty owed to their clients, the legal system and the profession. Their conduct was knowing and intentional. The amount of actual injury here was significant. Respondents' unauthorized practice of law harmed both the clients and the legal system as inadequate and improper representation was rendered to the clients. Further, the disciplinary system has suffered undue burden and expense because of the Respondents' false applications. The Board further finds that the mitigating factors of lack of prior discipline and inexperience in the practice of law are present in this matter. The Board agrees with the hearing committee that the aggravating factors of multiple offenses and a refusal to acknowledge the wrongful nature of the misconduct are also present.

b. Analysis of ABA Standards and Case Law

While the Board recognizes the seriousness of the Respondents' misconduct, and the applicable ABA Standards cited by the hearing committee, disbarment in this matter appears to be too harsh. In the case of *In re LaNasa*, 93-1823 (La. 10/28/93); 625 So.2d 1337, disciplinary proceedings were brought against an attorney for his unauthorized use of $1,500 of his client's funds and making false statements on his application to the Mississippi Board of Bar Admissions. The respondent admitted that he did not his client's express permission to use her funds. Although respondent thought that he had implied authority based on his close relationship with his client and prior loans from her, he did not have such authority. Moreover, respondent failed to provide complete responses to the questions on his application to take the Mississippi Bar Exam. *Id.*

The hearing committee recommended that the respondent be disbarred from the practice of law. The aggravating factor of prior discipline was present. The Court, noting the respondent's quick repayment of the borrowed funds (within approximately 30 days), his client's manipulation of him in handling her legal matters, the reasonableness of respondent's interpretation of some of the questions on the Mississippi Bar Exam application, and the lack of injury caused by the respondent's conduct, concluded that disbarment was too harsh a sanction. The Court imposed a two year suspension instead. *Id.*

While the Board recognizes that several aggravating factors are present in this matter, it also recognizes that the Respondents have no prior disciplinary record and were inexperienced in the practice of law at the time the

misconduct occurred. As such, the Board will recommend that the Respondents receive a two year suspension in the matter and be assessed with all costs and expenses of these proceedings.

RECOMMENDATION

The Disciplinary Board recommends that the hearing committee's report be modified as noted above and that the Respondents, Jerry and Teresa Lynn Witt Stamps, be suspended from the practice of law for two years. The Disciplinary Board also recommends that the Respondents be assessed with all costs and expenses of these proceedings.

LOUISIANA ATTORNEY DISCIPLINARY BOARD

Judy Y. Barrasso

Donald R. Brown

Reginald R. Brown, Sr.

Dr. Constance C. Dolese

Robert E. Leake, Jr.

Jack O. Whitehead, Jr.

BY: _____

JAMES L. PATE

FOR THE ADJUDICATIVE COMMITTEE

Peter T. Dazzio – Dissents with reason.

Billy R. Pesnell – Dissents with reason.

DISSENT TO RECOMMENDATION TO THE LOUISIANA SUPREME COURT

I dissent. If, as the Board finds, Respondents deliberately and knowingly falsified their applications for admission to the Louisiana Bar and secured their admission to the Louisiana Bar on the basis of materially false applications, then Respondents should be disbarred, as the Hearing Committee recommended.

The Board finds that because of Respondents' knowing failure to disclose their employment by Mr. Locklear on their bar admission applications, " . . . the bar admissions committee was not afforded the opportunity to fully investigate their background to determine if they were qualified to become officers of the court." Slip Op., p. 12. The violations found by the Board go to the heart of Respondents' fitness to practice law. If Respondents had properly completed their applications, the bar admissions committee might well have denied their applications.[1] In any event, there has been no valid determination of Respondents' fitness to practice law and to be admitted to the Bar of Louisiana as a result of their false applications.

Respondents should be stripped of every benefit and advantage gained by their false applications. If Respondents want to practice law in this State, they should be required to re-submit their applications for admission to the Louisiana bar, so that the bar admissions committee

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[1] Under North Carolina law, the unauthorized practice of law is a misdemeanor crime. See N.Car. G.S. 84-8. For some reason not disclosed by the record, Respondents were not charged with a violation of Rule 8-4(b) of the Rules of Professional Conduct.

can properly evaluate their fitness to practice law. The Board's sanction of suspension for a period of two (2) years allows Respondents to benefit from their wrong.

The Board finds two (2) mitigating factors in its assessment of the sanction: (1) Respondents have no prior disciplinary record; and (2) Respondents were inexperienced in the practice of law at the time the misconduct occurred. Slip Op., p. 12. I disagree. In my view, inexperience in the practice of law is not a mitigating factor in this case. It is not a mitigating factor, in my opinion, when the issue is honesty. Nor should it be a mitigating factor when the offense charged is the "unauthorized practice of law." Respondents must have known that they were not authorized to practice law. Similarly, the fact that Respondents "have no prior disciplinary record" has a hollow ring in light of the fact that Respondents gained admission to the Louisiana bar on the basis of false and fraudulent applications.

/s/ Billy R. Pesnell

PANEL: "C" DATE OF PANEL HEARING: October 24, 2002

VOTING ON: DISSENT FROM PANEL'S SANCTION

DISSENT:

I concur in the violation, but dissent from the sanction. As noted by the hearing committee, the ABA Standards provide that the baseline sanction here is disbarment. Further, even though the mitigating factors of no prior discipline record and inexperience in the practice

of law are present, the aggravating factors of multiple offenses and a refusal to acknowledge the wrongful nature of the misconduct are present. Mr. Stamp's misconduct of failure to properly report his employment with Mr. Locklear on his May 17, 1999 bar application, coupled with the unauthorized practice of law violation, appears to warrant disbarment under the ABA Standards, as does Mr. Stamp's unauthorized practice of law violation.

Baton Rouge, Louisiana, this 12th day of June, 2003.

/s/ **Peter T. Dazzio**

IN RE STAMPS, JERRY JACKSON AND WITT-STAMPS, TERESA LYNN (7/10/2002)

DISCIPLINARY BOARD OF THE LOUISIANA STATE BAR ASSOCIATION

IN RE: DOCKET NO. 01-DB-039

JERRY JACKSON STAMPS AND TERESA LYNN WITT-STAMPS

FINDINGS AND RECOMMENDATIONS OF HEARING COMMITTEE

Respondents Jerry Jackson Stamps and his wife Teresa Lynn Witt-Stamps were charged by the Office of Disciplinary Counsel ("ODC") with violations of the Rules of Professional Conduct ("RPC"). This opinion constitutes the findings of the Hearing Committee in this matter. For the reasons fully set forth, we find that ODC has proved violations of the Rules of Professional Conduct and recommend sanctions.

The hearing in this matter was held on September 25, 2001. At the hearing, there was no live testimony. Rather, the parties submitted this matter to be determined based on the record, which included various depositions (transcribed and video) and documentary evidence. The panel has fully considered all the evidence presented. Unfortunately, we did not have the opportunity to hear the Respondents testify or to examine them.

Based upon the record as submitted, therefore, the Committee makes the following findings of fact.

Findings of Fact

Respondents Jerry Jackson Stamps ("Mr. Stamps") and Teresa Lynn Witt-Stamps ("Mrs. Stamps") are husband and wife. Mrs. Stamps graduated from law school in May, 1998, having done undergraduate work at various colleges, including Yale University and Duke University. Mr. Stamps also graduated from law school the same year, having done his undergraduate work at Utah State University. Both Respondents graduated from Temple University School of Law in Philadelphia, PA. in 1998. Neither Mr. Stamps nor Mrs. Stamps passed the Louisiana Bar Examination when they took it in the summer of 1998, and thus were looking for work. Mr. Stamps is about 58 years old, and Mrs. Stamps is about 48 years old.

Following law school, Mr. and Mrs. Stamps moved to Long Beach, Mississippi. Mrs. Stamps found an advertisement on the Internet by an attorney named Gabrielee Locklear in Maxton, North Carolina. Mr. Locklear stated in his advertisement that he was looking for law school graduates or associates to affiliate with his office. Mrs. Stamps telephoned Mr. Locklear and after several telephone discussions, Mr. and Mrs. Stamps traveled to North Carolina to visit Mr. Locklear. After returning home, Mr. Locklear contacted Mrs. Stamps to discuss terms of employment. Respondents made one or more subsequent trips to North Carolina, and by December, 1998 "we had kind of refined the details of what he would be willing to pay us [and] he presented us with a contract that he had drawn up and asked us to sign and go to work for him."[1]

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[1] Mrs. Stamps' Statement, p.12.

The contract that was signed by Mr. and Mrs. Stamps effective January 2, 1999 (Exhibit 3) has the following pertinent provisions:

> "Employee is hereby hired to perform services for Employer in the capacity of an Associate. In such practice, Employees' duties shall consist of the general practice of law consistent with the rules of law of the Supreme Court of North Carolina . . . [and] while employed by Employer, Employees shall use their best efforts to provide legal counsel and service to customers in the following counties . . . Employees fully and completely understand and accept their obligations under this Agreement . . . During the employment term, the parties shall enter into partnership negotiations . . . For all services rendered by Employees hereunder, Employees shall receive compensation in the amount of $36,000.00 per year per Employee plus ten percent of revenue generated by Employees . . . "

Thus, the contract signed certainly indicates that Mr. and Mrs. Stamps were being employed as "associates" in the "general practice of law" to "provide legal counsel," that a portion of their compensation was to be from "revenue generated" by them, and that they would "enter into partnership negotiations." Mrs. Stamps, however, testified regarding the contract as follows:

> "They give that impression, but I have to tell you that, first of all, I didn't draw up the contract. He [Locklear] drew up the contract. And it was clear that we had not passed the bar. He knew that we

were not licensed attorneys, so we were relying on him."[2]

Mrs. Stamps testified that to her the word "associate" did not denote the word "lawyer" to her. Mrs. Stamps testified that "I can see how the wording of the contract, you know, was probably not the smartest thing ever was."[3] Mr. Stamps testified that he did not like the wording of the contract and that Mr. Locklear knew that neither Mr. or Mrs. Stamps had passed the bar.[4]

Mr. and Mrs. Stamps proceeded to move to North Carolina and began working with Mr. Locklear. She testified that she never met "any clients on an individual basis," and testified that she never received any money directly from clients of Mr. Locklear. Mrs. Stamps worked on several personal injury cases. Mrs. Stamps' recollection of her work in North Carolina was very sketchy and she seemed to be unable to recall much about what she did for clients or even the names of various clients. Mr. Stamps testified that he never met with Mr. Locklear's clients when Mr. Locklear was not present, and he could only recall doing legal research on one case. He said that he mostly helped Mr. Locklear with some personal financial matters.

Mr. Stamps testified that he and his wife were looking for employment after they had each failed to successfully pass the Louisiana Bar Examination. Mr. Stamps testified that Mr. Locklear was aware that he and his wife were not

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[2] Mrs. Stamps' Statement, p.15.

[3] Mrs. Stamps' Statement, p. 56.

[4] Mr. Stamps' Statement, p.8.

licensed attorneys. Mr. Stamps testified that he read the contract and "had some reservations about his contract."[5]

As noted, Mr. Stamps testified that Mr. Locklear asked him to put together a loan package to help him refinance some property in North Carolina. Mr. Stamps testified that he never interviewed any clients. Although Mr. Stamps testified that he could not recall working on any of Mr. Locklear's client's cases, the letters that he wrote to Mr. Locklear following termination of the employment certainly leads to the conclusion that he and his wife did so. Although Mr. and Mrs. Stamps clearly received some income from Mr. Locklear, apparently Mr. Locklear did not issue either a W-2 or a 1099 form to either of them ("he dealt in cash"[6]), Mr. Stamps testified that they estimated what income they had received from Mr. Locklear and included it on their 1999 tax returns[7] (signed August 12, 2000).

Following the termination of their employment with Mr. Locklear, letters were written by Mr. and Mrs. Stamps to Mr. Locklear apparently trying to obtain payment for monies alleged to be owed to them (Exhibits 9A, B, C). Some quotes from these letters are illuminating:

"We worked on six cases for Billy Blackwell."

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[5] Mr. Stamps, transcript p. 8.

[6] Mr. Stamps, transcript p. 30.

[7] A tax return for 1999 was introduced into evidence. Although Mrs. Stamps indicated that Mr. Stamps prepared the tax return, Mr. Stamps testified that Mrs. Stamps was the one who included some portion of the North Carolina income on Mrs. Stamps' statement of income from her Louisiana practice.

> "Altogether, we spent a total of 50 hours on the above cases for Billy Blackwell. As you know at $90.00 per hour, the legal fees would amount to $4500.00."
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> "We discussed all of Billy's cases with you, and it doesn't seem that Billy is entitled to a refund considering the amount of work that has already been done on his cases. Of course, he can always go to the bar and let them decide if 50 hours on 6 cases is not his monies' worth."
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> "To clarify, Billy Blackwell signed three personal injury retainer agreements. I did not think we should do these cases unless we received expense money up front, so I informed Billy we needed at least $1500.00 before we could begin doing any work on the cases."
>
> "I spent a GREAT deal of time on Billy's tobacco case and made numerous phone calls getting medical records . . . "

Another letter, written on letterhead of Mr. Locklear, was sent to an insurance company and signed by "Lynn Stamps, Esq."[8]

> Mr. Stamps testified as follows regarding one of the letters he wrote to Mr. Locklear:
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> "Q. It says, "While employed as associates at your firm, we worked on six cases for Billy Blackwell."

[8] The argument of ODC is that the abbreviation "Esq." implies that the author is an attorney. Objection was made by Respondents to the introduction of this document. See discussion below.

> A. Well, I was saying We – well, that was my wife. People would address us, the Stamps, as "We." I was referring to her. I didn't work on his cases or any case at all.
>
> Q. What were you referring to when you said, "Employed as associates with your firm"?
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> A. Basically our contract or agreement.
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> Q. I thought you said that contract or agreement was not followed through?
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> A. It wasn't but whenever you – I was talking to [Mr.] Locklear, he – you know, I mean, he was always referring to the agreement so I followed through on it."[9]

In several places in Mr. Stamps' testimony, he claims that the word "we" as used in his letters to Mr. Locklear sometimes refer only to Mrs. Stamps, and other times refer to both him and Mrs. Stamps. His testimony on what he meant by the word "we" was not credible. In fact, Mr. Stamps' entire explanation of the letters he wrote to Mr. Locklear and what those letters meant appeared to us to be confusing and at times contradictory.

Carolin Bakewell testified by deposition. Ms. Bakewell is a North Carolina attorney employed by the North Carolina State Bar Association to head its disciplinary program. She testified that Mr. and Mrs. Stamps were never admitted to the Bar in North Carolina. Attached to her deposition were various checks made out to Mr. and/or Mrs. Stamps. The Disciplinary Hearing Commission for the North Carolina State Bar issued an Order of Discipline

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[9] Mr. Stamps' Statement, p. 40.

against Mr. Locklear on October 16, 2000 disbarring him from the practice of law. Included within those findings of fact by the North Carolina State Bar were the following findings:

> "Findings of Fact Relating to Fifth Claim of Relief
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> 36. In the Fall of 1998, Locklear hired two non-attorneys, Lynn and Jerry Stamps, to work in his law office.
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> 37. Locklear knew that Lynn nor Jerry Stamps were non-attorneys and that neither has never been licensed to practice law in North Carolina.
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> 38. Despite the fact that he knew that neither Lynn nor Jerry Stamps was licensed to practice law in North Carolina, on various occasions, Locklear divided fees with Lynn and/or Jerry Stamps, including the following:
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> a. On or about January 11, 1999, Locklear divided with Jerry Stamps the fee which Locklear earned in a case which Locklear handled for Joseph Paddison.
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> b. On or about December 21, 1998, Locklear divided with Jerry and Lynn Stamps the fee which he earned in a case which Locklear handled for Roger Godwin.
>
> c. On or about January 14, 1999, Locklear divided with Lynn Stamps the fee which he earned in a case Locklear handled for Carl Oxendine . . .

> Conclusions of Law . . .
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> 4. By sharing legal fees with Jerry and Lynn Stamps, who were not licensed to practice law in North Carolina, Locklear divided legal fees with non-attorneys in violation of Rule 5-4(a) of the Revised Rule of Professional Conduct."[10]

The deposition testimony of Ms. Brenda Williams was offered. She was deposed in order to produce documents from the files of a North Carolina insurance company. ODC claims that those documents show that the insurance company believed Mrs. Stamps to be an attorney and that Mrs. Stamps was negotiating a personal injury settlement with the insurance adjuster.

The deposition testimony of Ms. Robin Capps was offered. She is an insurance adjuster in North Carolina. ODC suggest that her testimony shows that Ms. Capps believed Ms. Stamps to be an attorney.

The deposition testimony of Mr. James David Williams was offered. He was a client of Mr. Locklear. ODC claims that his testimony shows that Mrs. Stamps was negotiating a personal injury settlement on his behalf, and that a check issued for his settlement included as payee "Lynn Stamps, Attorney for John [sic.] Williams." Cross-examination was intended to show that Mr. Williams was not precisely certain who he dealt with

The deposition testimony of Mr. Billy James Blackwell, another client of Mr. Locklear, was offered. Mr. Blackwell is not highly educated, and his testimony was at times hard to follow. However, certain of his testimony

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[10] See Exhibit 7 to Bakewell testimony.

certainly was consistent with the theme of other testimony and the scope of the charges. For instance, he testified that Mr. Stamps had a plaque on his desk labeled "$50 consultation fee." He said that he paid that fee to one or both Respondents on more than one occasion. He also testified that he gave Mrs. Stamps additional money to represent him, and was never told she was not a lawyer. The testimony of Dr. A. J. Sabella was offered. His testimony was apparently intended to show that he believed Ms. Stamps to be an associate of Mr. Locklear. Mrs. Stamps conditioned the Louisiana Bar Examination on her first attempt, and Mr. Stamps failed the Louisiana Bar Examination on his first attempt, and ended up taking the Bar Examination three times. The application for the Louisiana State Bar Examination, question 13, requires the applicant to list employment for the past 10 years. In their applications, Mr. and Mrs. Stamps responded to this question as follows:

Mr. Stamps Application Date

May 28, 1998 – "None (full-time student)"

December 20, 1998[11] – "Have been fulltime student for past ten years"

May 17, 1999 – "Have been full time graduate student and law student"

Mrs. Stamps Application Date

May 28, 1998 – "N/A – (Have been full-time student for past ten years)"

December 20, 1998[12] – "Have been full time student for past ten years"

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[11] This application was notarized by Mr. Locklear.

[12] This application was notarized by Mr. Locklear.

ODC Charges

ODC filed the following formal charges against Respondents on April 11, 2001:

Count I

On or about December 20, 1998, both of you executed a contract of employment with Gabrielee Locklear, then a North Carolina licensed attorney, whereby both of you were to commence working for Mr. Locklear, as associates. Your duties, as set forth in the contract, were to consist of the general practice of law. You both commenced working for Mr. Locklear on or about January 2, 1999 at his Maxton, North Carolina office. Between that date and about April 20, 1999, you both engaged in activities constituting the practice of law, including one or more fo the following: negotiating with opposing parties; advising clients; and charging and collecting fees. Neither of you have ever been licensed to practice law in North Carolina. On December 20, 1998, you both made application to take the Louisiana Bar Exam. The applications were executed in Maxton, North Carolina, and were notarized by Mr. Locklear. Neither of you included any mention of either your association or your activities while associated, with Mr. Locklear in your Louisiana Bar Exam applications. Neither of you amended your applications to include that information. Jerry Jackson Stamps did not include any mention of either his association, or his activities while associated, with Locklear in his May 17, 1999 application to take the Louisiana Bar Exam. Teresa Lynn Witt-Stamps was licensed to practice law in Louisiana on April 23, 1999. Jerry Jackson Stamps was licensed to practice law in Louisiana on October 15, 1999.

> Both of you have engaged in the unauthorized practice of law, and have omitted significant and relevant information from your applications to take the Louisiana Bar Exam. Your conduct violated Rule 5.5(a)(b); and 8.4(a)(c)&(d) of the Rules of Professional Conduct."

Evidentiary Objections

Respondents object to several items of evidence, principally the attachments to the deposition of Ms. Williams (based on lack of foundation for witness' knowledge) and the failure to formally introduce the exhibits during her examination.

Generally, in disciplinary matters, the Louisiana Code of Evidence applies, Rule XIX, §18(B). In *In Re Quaid*, 94-1316 (La. 11/30/94), 646 So.2d 343, the Court held as follows:

> "We need not reach the question of whether bar disciplinary proceedings are in the main to be strictly governed by the Rules of Evidence, because we find that the record here contains sufficient admissible evidence, consisting of the business records generated by the SSA and the party admissions by Respondent before the SSA and the hearing committee, to adjudicate this matter. We note, however, that the purpose of Rules of Evidence primarily intended to govern jury trials, particularly the hearsay rules, are less compelling in the context of imposing discipline on members of the legal profession. This Court retains power to determine the ultimate question of admissibility under its original jurisdiction as the triers of fact in disciplinary proceedings, and it may well be more appropriate in

> disciplinary proceedings to be guided but not confined by strict application of the Code of Evidence . . . [citation omitted] we observe that such an approach has been taken in other jurisdictions. [citations omitted.]"

We find here, as did the Court in Quaid, that the record has more than sufficient other admissible evidence to allow us to reach our conclusion, and thus we need not rule on the referenced objection. However, if compelled to rule, we believe Quaid would allow such evidence to be introduced.

Peremptory Exceptions

Respondents sought peremptory dismissal of the charges based on the following grounds:

> 1. None of the conduct complained of occurred in Louisiana.
>
> 2. Respondents did not work in Louisiana as lawyers until such time as they were lawfully admitted to the Bar.

We carried the exceptions with the hearing, and at this time dismiss them. One of the charges that is the subject of this matter relates to falsification of the Respondents' Application to the Louisiana Committee on Bar Admissions. Whether those applications were filled out in Louisiana or not is of no moment. Respondents consented to the jurisdiction of the Supreme Court and the system of disciplinary enforcement by seeking admission. Were we to rule otherwise, there would be no mechanism to encourage truthful responses to the important questions posed on the application. Finally, the Supreme Court possesses the power to determine the qualifications of those who apply

for admission to the practice of law. State v. Kaltenbach, Cr 86-1270 (La. 10/2/91), 587 So.2d 779. Therefore, whether or not Respondents did or did not engage in the unauthorized practice of law in North Carolina is, to us, not relevant for purpose of ruling on the exceptions. Clearly Respondents are subject to the attorney disciplinary system of this State, one of the charges against them is for falsifying their Bar application, and their motion therefore must fail.

Motion for Involuntary Dismissal

Respondents sought dismissal of the case at the close of ODC's presentation. We did not make any ruling on the Motion at that time. However, we now deny the Motion.

> "In a non-jury case, the appropriate standard for the trial court's determination of a motion for involuntary dismissal is whether the plaintiff has presented sufficient evidence on his case-in-chief to establish his claim by a preponderance of the evidence [citations omitted]. Proof by a preponderance of the evidence simply means that, taking the evidence as a whole, such proof shows that the fact or cause sought to be proved is more probable than not. In making its determination on such a motion, the trial court is not required to review the evidence in the light most favorable to the plaintiff as is done when a motion for directed verdict is filed in a jury case [citations omitted]. Unlike the motion for a directed verdict in a jury trial, a motion for involuntary dismissal pursuant to LSA-C.C.P. art. 1672 B requires a judge to evaluate the evidence and render a decision based on a preponderance of the evidence without any special inferences in favor of the opponent to the motion [citations omitted]. In other

> words, on a motion for involuntary dismissal, the trial judge is only required to weigh and evaluate all of the evidence presented up to that point and grant a dismissal if the plaintiff has failed to establish his claim by a preponderance of the evidence [citations omitted]. Proof by a preponderance of the evidence simply means that, taking the evidence as a whole, such proof shows that the fact or cause to be proved is more probable than not [citations omitted]. Although the plaintiff is not entitled to any special inferences in his favor, absent circumstances in the record casting suspicion on the reliability of the testimony and sound reasons for its rejection, uncontroverted evidence should be taken as true to establish a fact for which it is offered [citations omitted]." Tyler v. Our Lady of the Lake Hospital, Inc., 96-CA-1750 (La. App. 1 Cir. 6/20/97), 696 So.2d 681.

Having had the opportunity to review ODC's evidence and considering the foregoing burden of proof, the evidence clearly was sufficient to withstand the motion.

Discussion and Recommendation

Disciplinary proceedings are neither civil nor criminal but are sui generis. Supreme Court Rule XIX, §18(A). "Disciplinary proceedings are not primarily to punish the attorney, but to protect the courts and the public from unprofessional conduct . . . The purpose is to deter future misconduct by a penalty, which will have a salutary effect on other members of the bar . . . A proper sanction protects the public from dishonest and/or incompetent attorneys while maintaining competence in the courts." *In Re Sharp*, 2001-1117 (La. 12/7/01), 802 So.2d 588; *In Re Leblanc*,

2001-0099 (La. 4/27/01), 786 So.2d 719; *In re Alker*, 85-B-0765 (La. 6/23/86), 491 So.2d 1328. See also *In Re Faucheaux*, 02-0054 (La. 5/24/02), ___ So.2d ___.

ODC has the burden of establishing by clear and convincing evidence that the Respondents are guilty of the allegations of misconduct. Supreme Court Rule XIX, §18(C)(D). *Louisiana State Bar Association v. Fish*, 88-B-0942, (La. 6/4/90), 562 So.2d 892. Under the "clear and convincing" standard, the fact of a respondent's guilt must be proven by ODC to a greater degree that by a mere preponderance of the evidence, but less than beyond a reasonable doubt. In Re Caulfield, 96-1401 (La. 11/25/96), 683 So.2d 714, reh. den. To make a case under the clear and convincing standard, there must be evidence sufficient to produce in the mind of the trier of fact a firm belief as to the facts sought to be established, proof that the existence of the fact is highly probable, much more probably than its non-existence. The burden of proof is more than in a civil case (preponderance of the evidence) but less than criminal cases (beyond a reasonable doubt). *LSBA v. Edwins*, (La. 2/23/76) 329 So.2d 437 at 442.

As previously noted, the Supreme Court possesses the power to determine the qualifications of those who apply for admission to the practice of law. State v. Kaltenbach, Cr 86-1270 (La. 10/2/91), 587 So.2d 779. Therefore, clearly, Respondents are subject to the attorney disciplinary system of this State.

The Rules of Professional Conduct under which Respondents are charged state:

Rule 5.5. Unauthorized practice of law

A lawyer shall not:

(a) Practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(b) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Rule 8.1 Bar admission and disciplinary matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(a) Knowingly make a false statement of material fact; or

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6 . . .

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; . . .

> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> (d) Engage in conduct that is prejudicial to the administration of justice; . . .

Based on a consideration of the evidence presented, we find that ODC has at least proven most of its charges by clear and convincing evidence. We find that Mr. and Mrs. Stamps were at best not forthcoming in their Bar applications, and, at worse, made statements known by them not to be true. Even if they thought that they had not technically practiced law in North Carolina, at the least they should have disclosed their employment with Mr. Locklear so that the Supreme Court could make a proper investigation of their background. We find that ODC proved that both Respondents violated Rules 8.1(a) and (b), and 8.4(a), (c), and (d). It is to be recalled that Mrs. Stamps testified that by December, 1998, she and her husband "had kind of refined the details of what [Mr. Locklear] would be willing to pay us [and] he presented us with a contract that he had drawn up and asked us to sign and go to work for him." Their contract with Locklear has an effective date of January 2, 1999. Each Respondent submitted a Bar application dated December 20, 1998, notarized (presumably in North Carolina) by Mr. Locklear. Thus, we conclude that Mr. Stamps' applications dated December 20, 1998 and May 17, 1999 and Mrs. Stamps' application December 20, 1998 contained untruthful answers to question 13. By December, 1998, both Respondents were well-aware that they were going to be working for Mr. Locklear, and they should have disclosed that fact on their applications.

ODC also charges that Respondents practiced law in North Carolina without a license, in violation of Rule 5.5. We certainly believe the evidence supports such charge, at least as to Mrs. Stamps, clearly and convincingly, particularly based on the letters written by Respondents to Mr. Locklear. Respondents argue procedural and merit defenses to the charges regarding the unauthorized practice of law, and in fact, spent all of their argument at the hearing on that issue. Even assuming we were to agree that the evidence was not clear and convincing evidence of such conduct, our finding that Respondents did not truthfully answer question 13 on their cumulative applications for admission to the Bar still provides a basis for sanctions.

Respondents' argument on why they did not violate Rule 5.5 is made in their Post-Trial Memorandum. In short, Respondents argue that "there was no employment to disclose" since, they posit, no salaries "were earned or paid," no taxes were withheld, no W-2 forms were provided, they had no "workplace" in North Carolina, they had no established work hours, and Respondents only lived as transients in North Carolina motels. We find these arguments insincere, unconvincing, and wholly incredible. Clearly, Respondents were paid by Locklear or Locklear's clients. Clearly, Respondents were Locklear's associates or employees or consultants or paralegals or research assistants or aides-de-camp. Respondents' employment contract with Locklear refers to them as "employees." Mrs. Stamps testified that Mr. Locklear asked her and Mr. Stamps "to go to work for him." Further, Respondents' June 10, 1999 letter to Locklear states that "we worked on six cases for Billy Blackwell." For Respondents to now attempt to

somehow distance themselves from their activities for Locklear finds no home with us.

Respondents do not clearly articulate their argument, but we presume that they are arguing that *as of the dates* of their Bar applications, or a least their applications dated May and December of 1998, there was "no employment to disclose." This is certainly the import of Mrs. Stamps' testimony in her sworn statement. As to the May, 1998 applications we agree. However, the December, 1998 applications were signed in the same time frame that Mrs. Stamps testified that the details of her and her husband's employment with Locklear were being finalized. Certainly as of December, 1998, we believe that Respondents knew that they were embarking on some sort of employment relationship with Locklear. Even if we were to believe that Respondents had "no employment to disclose" in December, 1998, Respondents had a duty to seasonably supplement their Bar applications with the particulars of their employment. A failure to supplement a Bar application with subsequent information that would make the application correct is, to us, the same as knowingly answering an application question untruthfully. Rule 8.1(b) states that an applicant for admission "shall not . . . fail to disclose a fact necessary to correct a misapprehension . . . " And as we have already noted, the application of Mr. Stamps dated in May, 1999 clearly was untruthful.

It makes no difference whether or not Mr. and/or Mrs. Stamps did or did not practice law in North Carolina for purposes of the charges under Rule 5.5, inasmuch as neither of them disclosed whatever employment relationship they believed they had with Mr. Locklear on their Louisiana applications. The Bar applications require disclosure of *employment*, not disclosure of the practice of

law. Further, we believe the word "employment" must be used in its common sense understanding, not in some highly technical manner that might be raised in some workers compensation/statutory employer/tort action.[13] ODC's charges clearly state that "both of you have engaged in the unauthorized practice of law, and have omitted significant and relevant information from your application to take the Louisiana Bar Exam." (Emphasis added.) Thus, ODC's charges encompass both the unauthorized practice of law and the omission of information from question 13 on the applications for admission. Thus, without regard to whether or not Mr. or Mrs. Stamps did or did not "practice law" in North Carolina, they without doubt omitted significant and relevant information from their bar applications about their "employment."

Discussion of the ABA Standards and the Sanction to Be Applied

Having found violations of the Rules of Professional Conduct, we now turn to a determination of an appropriate sanction for Respondents' misconduct. The purpose of disciplinary proceedings is not primarily to punish the lawyer, but rather to maintain the appropriate standards of professional conduct, to preserve the integrity of the legal profession and to deter other lawyers from engaging in violations of the standards of the profession. *In re Dumas*, 02-0149 (La. 6/7/02), ___ So.2d ___; In re Vaughan, 00-1892 (La. 10/27/00), 772 So.2d 87; *In re Lain*, 00-0148

[13] See Black's Law Dictionary, defining the word "employment" as "a request and a contract for compensation." See also Webster's New Collegiate Dictionary, defining it as the "state of being employed," and defining "employ" as "to engage for work."

(La. 5/26/00), 760 So.2d 1152; *Louisiana State Bar Ass'n v. Levy*, 400 So.2d 1355 (La. 1981). The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved, considered in light of any aggravating and mitigating circumstances. *In re Redd*, 95-1472 (La. 9/15/95), 660 S.2d 839; *Louisiana State Bar Ass'n v. Whittington*, 459 So.2d 520 (La. 1984).

We are firmly convinced that the misstatements made by Respondents on their applications were knowingly made, and cast doubt on their integrity to engage in the practice of law. We further believe that at least Mrs. Stamps did in fact practice law in North Carolina without a license.

The ABA Standards for Imposing Lawyer Sanctions provides:

> 7.0 Violations of Duties Owed to the Profession
>
> Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services, improper communication of fields of practice, improper solicitation of professional employment from a prospective client, unreasonable or improper fees, unauthorized practice of law, improper withdrawal from representation, or failure to report professional misconduct.
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> 7.1 Disbarment is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed to the profession with the intent to obtain a benefit for the lawyer or another, and causes services or potentially serious injury to a client, the public, or the legal system.

Commentary

> Disbarment should be imposed in cases when the lawyer knowingly engages in conduct that violates a duty owed to the profession with the intent to benefit the lawyer or another, and which causes serious injury or potentially serious injury to a client, the public or the legal system. For example, disbarment is appropriate when a lawyer intentionally makes false material statements in his application for admission to the bar . . .
>
> 6.21 Disbarment is generally appropriate when a lawyer knowingly violates a court order or rule with the intent to obtain a benefit for the lawyer or another, and causes serious injury or potentially serious injury to a party or causes serious or potentially serious interference with a legal proceeding.

Thus, the baseline sanction is disbarment.

The standards also state:

> 3.0 Generally
> In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:
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> (a) the duty violated;
>
> (b) the lawyer's mental state; and
>
> (c) the actual or potential injury caused by the lawyer's misconduct; and
>
> (d) the existence of aggravating or mitigating factors.

Respondents did not testify before the Committee (other than through deposition) and submitted no evidence in mitigation. The only mitigating factors we might be able

to consider, based on the record as submitted, would be due to Respondents' inexperience and absence of a prior disciplinary record. See ABA Standard 9.32. However, we would not find such mitigation in this case. The Respondents are obviously educated individuals, well beyond the age of most law school graduates – they are mature individuals. Their lack of legal experience is irrelevant to the plain language requirement of application question 13, and to the presumption that they knew their employment in North Carolina (whatever it was) was certainly reportable. Further, at least as to Mrs. Stamps, due to our conviction that she was in fact practicing law without a license, she must be assumed to have known that her conduct was unlawful. Therefore, the Respondents having elected not to submit any evidence in mitigation, we find none to be warranted. Indeed, it could well be argued that aggravating factors are present, See Rule 9.31, such as multiple offenses and a refusal to acknowledge the wrongful nature of the misconduct.

We conclude the baseline sanction of disbarment is thus appropriate, and so recommend. We also conclude that all costs and expenses should be assessed against Respondents, and that interest should accrue on the costs from the date of finality.

ENTERED THIS ___ DAY OF JULY, 2002

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